

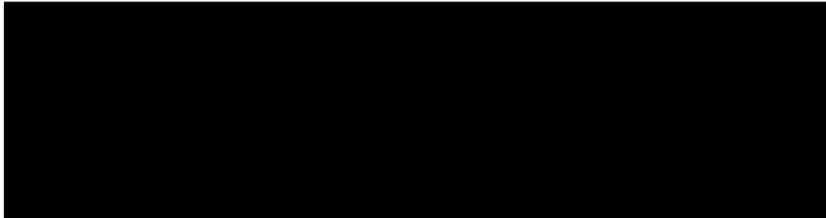


U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 29 2007  
EAC 06 054 52234

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.

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 his former wife battered or subjected him to extreme cruelty during their marriage.

On appeal, counsel submits a brief, additional evidence and copies of documents previously submitted.

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).

An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 . . ., 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.

\* \* \*

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

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

\* \* \*

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

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

(v) *Good moral character*. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of India who entered the United States on August 31, 1997 as a nonimmigrant visitor (B-2). On February 6, 2004, the petitioner married V-G<sup>1</sup>, a U.S. citizen, in Ohio. The former couple divorced on February 11, 2005. The petitioner filed this Form I-360 on December 8, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the legal termination of the petitioner's marriage to V-G-, the petitioner's good-faith entry into their marriage, the petitioner's

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<sup>1</sup> Name withheld to protect individual's identity. The record shows that the petitioner was previously married to another woman. In this decision, we refer to the petitioner's second wife as "V-G-" or his "former wife."

residence with V-G-, battery or extreme cruelty inflicted upon the petitioner by V-G-, and the petitioner's good moral character. The petitioner, through counsel, requested and was granted additional time to respond. On April 24, 2006, the director issued a Notice of Intent to Deny (NOID) the petition on the same grounds cited in the RFE. The petitioner, through counsel, responded to the NOID with additional evidence. The director denied the petition on August 10, 2006 for lack of the requisite battery or extreme cruelty and counsel timely appealed.

On appeal, counsel claims that the director erroneously concluded that discrepancies in the record rendered the petitioner ineligible. Although we agree that some of the discrepancies cited by the director are irrelevant to the merits of the petitioner's case, we concur with the director's determination that the petitioner has not established the requisite battery or extreme cruelty. Beyond the director's decision, the record also fails to demonstrate that the petitioner had a qualifying relationship with his former wife, was eligible for immediate relative classification based on such a relationship, entered into marriage with his former wife in good faith, resided with his former wife and is a person of good moral character.

*Battery or Extreme Cruelty*

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

- The petitioner's December 1, 2005 affidavit and second, undated affidavit submitted below and his August 29, 2006 affidavit submitted on appeal;
- Affidavits of the petitioner's acquaintances, [REDACTED] and [REDACTED] (full name of individual as handwritten on the affidavit is illegible);
- Copy of a letter dated June 12, 2006 by the petitioner's friend, [REDACTED];
- Letter dated May 20, 2005 from the petitioner's former wife (submitted by the petitioner);
- Records of the petitioner's arrest on July 29, 2004 and corresponding conviction of criminal trespass on August 2, 2004;
- The divorce complaint and motion for a temporary restraining order against the petitioner filed by the petitioner's former wife against him;
- Copy of the temporary restraining order issued against the petitioner for the protection of his former wife on July 14, 2004;
- The April 2, 2006 psychological evaluation of the petitioner by [REDACTED] a licensed clinical counselor; and
- Copies of photographs of the petitioner's personal property that was allegedly damaged by the petitioner's former wife and her family.

In his December 1, 2005 affidavit, the petitioner states that during the first six months of his marriage, his former wife forced him to work 14 hours a day renovating her house. He reports that she took kick-boxing, was very strong and would often hit him if he did not do as she wished and threaten to kick him out of the house or have her family "take care" of him. The petitioner states that his wife slept with

another man while he was present in the house, that she invited men to the house and told them the petitioner was the painter or just a friend. In "mid June 2005," the petitioner reports that his wife blamed him when her cat got loose, punched and kicked the petitioner causing his nose to bleed and that she hit his right ear with her knee and he blacked out for a few minutes. When he awoke, the petitioner states that his former wife had told her family that he had beaten her and they threatened to kill him. The petitioner explains that he was afraid to call the police because he did not think they would believe him and he was afraid of being deported. The petitioner states that their neighbor, Roger, heard the dispute and saw the petitioner's injuries.

At the "end of July 2005," the petitioner reports that he came home from work and found all of his belongings in the garage. When he spoke to his former wife, she called her father who came to the house with her two brothers and attacked the petitioner, grabbing him by the throat and warning him not to come back. About a week later, the petitioner states that he called his former wife to arrange for her to let him into her house to retrieve his belongings. The petitioner reports that upon his arrival, his former wife's father pulled him out of his car, threw him onto the lawn and had the petitioner's former wife call the police to tell them that the petitioner had violated her temporary restraining order (TRO). The petitioner reports that he was arrested, spent the night in jail and was released the next day. The petitioner states that he tried to explain what had happened, but the police "didn't care" and no charges were brought against him. The petitioner explains that this incident was the first time that he learned of the TRO. The petitioner reports that he had no place to go and had to sleep in his van. The petitioner explains that he did not want to divorce his former wife, but was forced to sign the divorce papers because she brought her two brothers with her when she came with the documents and the petitioner feared for his life.

In his second, undated affidavit, the petitioner adds that while he was renovating his former wife's house, he often had only one meal a day and his wife would give him macaroni and cheese, "a meal for children, not working man [sic]." The petitioner explains that problems arose in the former couple's marriage when he wanted to get a job and earn money for himself. The petitioner states that his former wife was upset and wanted him to work exclusively on her house. The petitioner reiterates that his neighbor, Roger Wills, knew what was going on and offered the petitioner a place to stay. The petitioner also explains that he did not know about the TRO for three months, during which time he was forced to stay in his van, although his former wife periodically allowed him to enter her house to continue work on the renovation. In his August 29, 2006 affidavit submitted on appeal, the petitioner provides further details regarding the July 29, 2004 incident leading to his arrest and the period of time that he lived in his van.

The records of the petitioner's arrest, criminal conviction, divorce and the TRO all contradict significant details in the petitioner's testimony and the remaining relevant evidence does not fully support his statements. In his December 1, 2005 affidavit, the petitioner describes two incidents of alleged abuse that occurred in "mid June 2005" and "the end of July 2005," the latter which led to his arrest. However, the record shows that the petitioner and his former wife were divorced on February 11, 2005. Accordingly, if the June and July incidents occurred in 2005, they would have taken place

after the petitioner's marriage was terminated and would not be qualifying abuse pursuant to section 204(a)(1)(A)(iii)(I)(bb) of the Act and 8 C.F.R. §§ 204.2(c)(1)(vi), 204.2(c)(2)(iv). In his affidavit submitted on appeal, the petitioner indicates that the July incident led to his arrest on "July 29, 2004," but he does not acknowledge the discrepancy between this date and that given in his testimony submitted below. On page three of his appellate brief, counsel also states that the petitioner was arrested on "July 29, 2005," but then erroneously states on page four that the petitioner stated in his December 1, 2005 affidavit that he was arrested in "late July – early August 2004." The arrest record shows that the petitioner was indeed arrested on July 24, 2004, but the petitioner stated the year of his arrest as 2005 in his December 1, 2005 affidavit. Counsel also fails to acknowledge or explain the discrepancy in these crucial dates.

Regardless of the inconsistencies in the petitioner's and counsel's statement of the pertinent dates, the Canton, Ohio Police Department record shows that the petitioner was arrested on July 29, 2004. In his December 1, 2005 affidavit, the petitioner states that following his arrest, he was released from jail and no charges were brought against him. However, the petitioner submitted a printout from the Online Case Docket of the Canton, Ohio Municipal Court for Case Number [REDACTED], which states that the petitioner was arrested on July 29, 2004 and a complaint was filed with the court on August 1, 2004 charging the petitioner with criminal trespass. The docket further shows that on August 2, 2004, the petitioner pled no contest and the court found the petitioner guilty as charged. In his August 10, 2006 decision denying the petition, the director cited the contradiction between the conviction record and the petitioner's statement that he was not charged with a crime in connection with his arrest. Yet the petitioner provides no explanation of this discrepancy on appeal.

The remaining, relevant evidence also fails to support the petitioner's claim. The affidavits of the petitioner's acquaintances fail to provide probative, detailed information sufficient to establish the requisite good-faith entry into the marriage. Although the petitioner states that [REDACTED] was aware of the petitioner's marital conflict, overheard the June incident and saw the petitioner's injuries, [REDACTED] May 10, 2006 affidavit is a pre-printed document that does not discuss the June incident or any other specific instances of abuse, or the effects thereof, which [REDACTED] witnessed. In fact, the substantive text [REDACTED]'s affidavit is repeated verbatim in the affidavits of [REDACTED] and [REDACTED]. The affidavits all state, "Unfortunately, [the petitioner's former wife's] family did not approve of the relationship and worked very hard to destroy it. In the end, [the petitioner's former wife] caved in under her family's pressure." The affidavits provide no details regarding any specific incidents of abuse that the affiants witnessed. Moreover, the repetition of the majority of the text of the affidavits indicates that the language is not the affiants' own and greatly detracts from their probative value.

The petitioner's friend, [REDACTED] states that the petitioner's disposition changed after he met his former wife and he seemed "stressed out much of the time." [REDACTED] reports that the petitioner told her that his former wife was taking advantage of him and would constantly throw him out and then tell him to return and that her family interfered and caused problems in their marriage. However, [REDACTED] states that she never met the petitioner's former wife and does not discuss any specific incidents

of abuse that she personally witnessed. [REDACTED] also does not provide probative, detailed information about her observations of the petitioner's physical and mental health during his marriage that would indicate that the petitioner was abused by his former wife.

[REDACTED] evaluation also fails to fully support the petitioner's claim. [REDACTED] states that his evaluation of the petitioner is based on one interview with the petitioner of unspecified length and other, unspecified "collateral information" provided by counsel. [REDACTED] describes the petitioner's marital conflict, as conveyed to him by the petitioner, diagnoses the petitioner with major depressive disorder, severe (pursuant to administration of the Beck Depression Inventory), and concludes that the petitioner was emotionally and physically abused by his former wife. However, [REDACTED] also discusses other significant issues affecting the petitioner's mental health such as the petitioner's troubled childhood in India, unsuccessful first marriage, loss of contact with his daughter from his first marriage, and fear of deportation. In his clinical diagnosis, [REDACTED] includes, "Axis IV – Issues with INS – Contact with daughter – Financial/employment issues [.] Axis V – 55 (Current) 75 (Prior to Immigration issues). [REDACTED]s evaluation indicates that the petitioner suffers from depression and provides one third-party conclusion that the petitioner's former wife abused him based on one interview with the petitioner after the RFE was issued. The evaluation does not, however, independently establish that the petitioner's former wife subjected him to battery or extreme cruelty during their marriage.

The copied photographs show furniture and other objects that have been placed in storage and pictures some objects that have been damaged. The copied photographs alone do not establish the requisite battery or extreme cruelty.

Finally, the divorce complaint, judgment and TRO all contradict the petitioner's claim. The divorce complaint avers that the petitioner "has been guilty of acts of gross neglect of duty and extreme cruelty" against his former wife. Counsel mistakenly refers to the divorce complaint as a "Copy of the divorce decree" for the petitioner and his former wife in his June 20, 2006 list of exhibits submitted in response to the NOID. Although specifically requested in the RFE and NOID, counsel failed to submit a copy of the actual divorce decree. Citizenship and Immigration Services (CIS) records contain a printout from the Stark County, Ohio Online Case Docket for Case Number [REDACTED] which shows that the court granted the divorce decree on February 11, 2005 to the plaintiff, the petitioner's former wife. Accordingly, the record indicates that the petitioner's former wife was granted a divorce on the grounds of the petitioner's gross neglect of duty and extreme cruelty. The petitioner failed to submit a copy or transcript of the entire order or other evidence to the contrary. The petitioner states that his wife's brothers previously assaulted him and that when they accompanied his former wife when she brought "divorce papers" for him to sign, he was forced to comply out of fear for his life. However, the case docket shows that the petitioner was served with the divorce complaint and summons on July 23, 2004 by special process server and the petitioner does not state that he nonetheless was never informed of the court hearings or was not given the opportunity to contest the grounds for the divorce.

On appeal, counsel discusses “minor inconsistencies [sic]” cited by the director that should not disqualify the petitioner. We agree that the discrepancies regarding the petitioner’s childhood in India, number of past jobs and the basis of the petitioner’s divorce from his first wife (that were cited by the director in his denial of the petition) are irrelevant to the merits of this case. However, significant discrepancies remain in the record that are germane to the petitioner’s claim of abuse. On appeal, the petitioner and counsel fail to explain or provide evidence to resolve the discrepancies regarding: the petitioner’s criminal conviction and his contradictory claim that he was not charged with a criminal offense arising from his arrest; and the dates of the two alleged incidents of abuse in June and July of 2004 or 2005. The remaining, relevant evidence fails to resolve these discrepancies and provides no probative evidence sufficient to establish battery or extreme cruelty. To the contrary, the record shows that the court granted the petitioner’s former wife a divorce upon the grounds of the petitioner’s own gross neglect and extreme cruelty and that the court issued a TRO against the petitioner for the protection of his former wife. The petitioner’s testimony does not sufficiently rebut the court record. Consequently, the petitioner has not established that his former wife subjected him or his child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Qualifying Relationship*

Beyond the director’s decision, the petitioner has also failed to demonstrate that he had a qualifying relationship with his former wife. To remain eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, an alien who has divorced his or her U.S. citizen spouse, must demonstrate “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As discussed in the preceding section, the petitioner has not established that his former wife battered or subjected him or his child to extreme cruelty. Accordingly, he has not demonstrated that their divorce was connected to such battery or extreme cruelty and that he remained eligible for immigrant classification pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

#### *Eligibility for Immediate Relative Classification*

Beyond the director’s decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on his relationship with his former wife, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive spouse. The petitioner failed to establish that he had a qualifying relationship with his former wife. Consequently, he is also unable to establish his eligibility for immediate relative classification based on such a relationship.

*Entry into the Marriage in Good Faith*

Beyond the director's decision, the petitioner has also failed to establish the requisite entry into the marriage in good-faith. The petitioner submitted the following evidence relevant to his alleged good-faith entry into marriage with his former wife:

- The petitioner's December 1, 2005 affidavit and his second, undated affidavit submitted below;
- Citizenship and Immigration Services (CIS) records of the petitioner's interview regarding his Form I-485, application to adjust status, on August 2, 2005 at the Cleveland, Ohio District Office;
- Affidavits of the petitioner's acquaintances, [REDACTED] and [REDACTED] (full name of individual as handwritten on the affidavit is illegible);
- Copy of a letter dated June 12, 2006 by the petitioner's friend, [REDACTED];
- Letter of the petitioner's friend, [REDACTED], notarized on June 1, 2006;
- Letter dated May 20, 2005 from the petitioner's former wife (submitted by the petitioner);
- Copy of the prenuptial agreement executed by the petitioner and his former wife on January 30, 2004;
- Copies of photographs of the petitioner and his former wife; and
- A videotape of the interior of the house of the petitioner's former wife.

In his December 1, 2005 affidavit, the petitioner states that he met his former wife on an unspecified date when they played together in a band. The petitioner explains that his former wife was married to her first husband at the time, but they became good friends, his former wife confided in him, he helped her through her separation and divorce and they began dating before her divorce was final. The petitioner states that he helped his former wife move out of her first husband's home and into her own house. The petitioner explains that he and his former wife had a small wedding ceremony in Cleveland, but did not invite his former wife's family because they did not approve of the relationship. The petitioner reports that after their marriage, he moved into his wife's house and he states, "At first, the relationship was nice. We were living like a normal man and wife. I truly loved my wife and she loved me back." In his undated, second affidavit, the petitioner states, "for the first seven months or so, we had lots of fun and laughter together." The petitioner states that he did not want to divorce his former wife because he still loved her, but he was forced to do so out of fear for his life. The petitioner does not further discuss how he met his wife, their wedding, courtship, marital residence or any of their shared experiences (apart from the alleged abuse) in probative detail.

In addition, the CIS record of the petitioner's statement at his adjustment interview on August 2, 2005 also conflicts with the petitioner's testimony in this case. In his December 1, 2005 affidavit, the petitioner states that he "felt humiliated and ashamed" by his wife's infidelity. However, the CIS record of the petitioner's adjustment interview reports that the petitioner told the officer that he also "cheated on her [his former wife]."

The remaining relevant evidence fails to support the petitioner's claim that he entered into marriage with his former wife in good-faith. The affidavits of the petitioner's acquaintances incorrectly state that the petitioner and his former wife were married until March 14, 2005. The record shows that the former couple divorced on February 11, 2005. The affiants state, "The marriage was very real and I think they loved each other very much. . . . [The petitioner] spent a considerable amount of time and money helping to fix up the house for [his former wife] and he." The affidavits provide no detailed, probative information and, as previously stated, the verbatim repetition of the affidavits indicates that the language is not the affiants' own and further detracts from their probative value.

states, "From the way [the petitioner] talked I could tell he was very in love with [his former wife] and wanted to make their relationship work." However, indicates that she never saw the former couple together and she provides no probative details to explain her perception of the petitioner's love for his former wife. also fails to provide detailed testimony sufficient to support the petitioner's claim. states that he attended the petitioner's wedding and that before the wedding, the former couple showed him the work that the petitioner was doing on his former wife's house. states, "They seemed very happy and very much in love." Yet does not indicate that he met the petitioner on any prior or subsequent occasions and his brief description of their interaction at the wedding is of little probative value.

In her letter, the petitioner's wife states that her father's disapproval of the marriage was the main reason for the former couple's divorce. She states that she loves the petitioner and he is one of the greatest people she has ever met in her whole life. Given the contradictory evidence of her divorce complaint, divorce judgment and TRO in her favor, the letter of the petitioner's former wife is equivocal.

The prenuptial agreement is signed by both the petitioner and his former wife and states that the agreement was drawn by the attorney of the petitioner's former wife, but that the petitioner did not obtain his own legal counsel because he believed such representation to be unnecessary. This attestation alone is not sufficient to establish that the petitioner entered into the marriage in good faith.

The majority of the copied photographs picture the petitioner's former wife individually and are of no probative value. The record contains just three pictures of the petitioner and his former wife together on two unspecified occasions. In one of these three joint pictures, the petitioner's image is illegible.

The videotape also fails to support the petitioner's claim. The videotape was filmed by the petitioner's wife on an unspecified date and shows the interior of a home. During the videotape, the petitioner refers to the home as "my house." At one point, the petitioner's former wife zooms in on the petitioner and says, "Here is [the petitioner]. He's done a lot of work in here." The videotape includes scenes of a bedroom, its closets and two bathrooms, none of which show any masculine clothing or objects that would indicate that the petitioner was residing with his former wife at the time. The petitioner's image and voice repeatedly appear throughout the video and the former couple converse in a manner that indicates that they are well-acquainted. However, with the possible exception of one point where the

petitioner's wife is filming her reflection in a mirror and the petitioner says, "You're very pretty," the videotape contains no other conversation or interaction between the petitioner and his former wife indicating a bona fide marital relationship or reflecting the petitioner's good-faith entry into their marriage.

The petitioner submitted no other documentary or testimonial evidence of his allegedly good-faith entry into marriage with his former wife of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the RFE and NOID. 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). While the short duration of the petitioner's marriage may explain his lack of joint documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), the testimonial evidence fails to provide detailed, probative accounts of the former couple's courtship, wedding and relevant shared experiences sufficient to establish the petitioner's claim. Accordingly, the petitioner has not demonstrated that he entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Joint Residence*

Beyond the director's decision, the record also fails to demonstrate that the petitioner resided with his former wife. The petitioner submitted the following evidence relevant to his alleged residence with his former wife:

- The petitioner's December 1, 2005 affidavit and second, undated affidavit submitted below and his August 29, 2006 affidavit submitted on appeal;
- Affidavits of the petitioner's acquaintances, [REDACTED] and [REDACTED] (full name of individual as handwritten on the affidavit is illegible);
- Copies of five automobile repair invoices and a letter addressed to the petitioner individually at the purported marital residence on [REDACTED] in Canton, Ohio and dated between April 26 and November 3, 2004;
- Copy of a sales order dated December 22, 2003 addressed to the petitioner's former wife individually at the purported marital residence;
- Copy of a statement from counsel's office dated August 5, 2004, jointly addressed to the petitioner and his former wife, and listing fees and expenses associated with their "Marriage Petition;" and
- The videotape of the interior of the house of the petitioner's former wife.

On the Form I-360, the petitioner states that he lived with his former wife from February 6, 2004 until June 2005. However, in his August 29, 2006 affidavit, the petitioner states:

I last *continuously* resided with [my former wife] until June 2005. During this time, [she] would kick me [sic] then have me come back whenever she was upset with me. This kept up for roughly a month, until the end of July 2005. After she kicked me out for the last time, in

late July 2004. [sic] . . . I lived in my van for roughly three months. In early November 2004, I began to live at my cousin's rental property [italics in original, emphasis of years added].

The petitioner's references to the "last time" his former wife kicked him out and the date he moved in with his cousin, combined with the records of his arrest and conviction in 2004, indicate that he actually resided with his wife until June 2004, not 2005, as he states on the Form I-360. The petitioner does not acknowledge or explain this inconsistency on appeal and the remaining, relevant evidence fails to resolve the discrepancy regarding the duration of the petitioner's alleged residence with his former wife.

In his December 1, 2005 affidavit, the petitioner states that he moved into his former wife's house after their marriage and that at first, they lived "like a normal man and wife." The petitioner does not further discuss his alleged residence with his wife in any probative detail, apart from the alleged abuse associated with his renovation of the house. As previously discussed, the affidavits of [redacted] and [redacted] are pre-printed documents, the substantive text of which is repeated verbatim. Each affidavit states that the petitioner "spent a considerable amount of time and money helping to fix up the house for [his former wife] and he." The affiants do not state the former couple's purported marital address and do not indicate that they ever visited or observed the former couple at their home. The invoices and letter listing the petitioner's residence as the purported marital home are addressed to the petitioner individually and do not show that his wife was living with him at the time. The sales order is addressed to the petitioner's former wife individually and is dated before the petitioner states that the former couple began living together. The only document jointly addressed to the petitioner and his former wife is the billing statement from counsel's office regarding the former couple's "Marriage Petition." Finally, as discussed in the preceding section, the videotape contains no images of masculine clothing or other evidence that the petitioner resided with his former wife.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and the RFE and NOID. 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). Again, the short duration of the petitioner's marriage may explain his lack of joint documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii), however, the relevant evidence submitted fails to establish that the petitioner resided with his former wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Good Moral Character*

Beyond the director's decision, the petitioner has also failed to establish that he is a person of good moral character. The petitioner submitted a clearance letter from the Cleveland Heights, Ohio Division of Police dated March 30, 2006, which states that the petitioner has no criminal record with the Cleveland Heights, Ohio Police Department. The petitioner also submitted letters from Joseph [redacted] and his former wife attesting to his good character and work ethic. However, the record shows that the petitioner was convicted of criminal trespass by the Canton, Ohio

Municipal Court on August 2, 2004 (Case Number [REDACTED]). Depending on the statute of conviction and, if relevant, the conviction record, the petitioner's offense may be a crime of moral turpitude. *See Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979). A self-petitioner's conviction for a crime of moral turpitude bars a finding that he or she is a person of good moral character. 8 C.F.R. § 204.2(c)(1)(vii), Sections 101(f)(3) and 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. §§ 1101(f)(3), 1182(a)(2)(A)(i)(I) (2007). The petitioner has not submitted evidence that his crime does not involve moral turpitude or that his conviction falls within the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act. Without such evidence, we cannot conclude that the petitioner is a person of good moral character despite his criminal conviction. The petitioner bears the burden of proof in these proceedings to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

The record fails to establish that the petitioner's former wife subjected him or his child to battery or extreme cruelty during their marriage, that he had a qualifying relationship with his former wife, was eligible for immediate relative classification based on such a relationship, entered into marriage with his former wife in good faith, resided with her, and that the petitioner is a person of good moral character. 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.

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 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.

**ORDER:** The appeal is dismissed.