



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **NOV 09 2007**  
EAC 05 053 52286

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:  
[REDACTED]

**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 (U.S.) citizen.

The director denied the petition because the petitioner did not establish that he had a qualifying spousal relationship with a U.S. citizen, was eligible for immediate relative classification based on such a relationship, was battered or subjected to extreme cruelty by his spouse during their marriage, entered into their marriage in good faith, and resided with his spouse.

On appeal, counsel submits a brief.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner. . . .

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

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

establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

\* \* \*

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

The petitioner in this case is a native and citizen of Ghana who entered the United States on August 23, 2001 as a nonimmigrant visitor (B-1). On July 5, 2002, the petitioner married A-H-<sup>1</sup>, whom he claims is a U.S. citizen. On June 9, 2004, the petitioner was served with a Notice to Appear for removal proceedings charging him under section 237(a)(1)(B) of the Act for remaining in the United States beyond his period of authorized stay. The petitioner remains in proceedings before the Baltimore Immigration Court and his next hearing is scheduled for November 14, 2007.

The petitioner filed this Form I-360 on December 13, 2004. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good faith marriage to his wife. The petitioner, through counsel, timely responded with further documentation. On November 20, 2006, the director issued a second RFE for evidence of a qualifying relationship, battery or extreme cruelty, good-faith entry into the marriage, joint residence and good moral character. On January 19, 2007, the petitioner, through counsel, requested an additional 60 days to respond and submitted additional evidence on March 16, 2007. On May 21, 2007, the director issued a Notice of Intent to Deny (NOID) the petition on the same grounds cited in the November 20, 2006 RFE and for lack of eligibility for immediate relative classification based on a qualifying relationship with a U.S. citizen. The petitioner, through counsel, responded to the NOID with additional evidence.

The director determined that the petitioner had not demonstrated a qualifying relationship and eligibility for immediate relative classification based on such a relationship because the evidence showed that the dissolution of the petitioner's prior marriage in Ghana did not occur until after he was married to A-H- in the United States. The director denied the petition on July 19, 2007 on the grounds cited in the November 20, 2006 RFE and the NOID, with the exception of good moral character.<sup>2</sup>

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

<sup>2</sup> Although the director listed lack of good moral character as one of the grounds for denial, he did not discuss this issue in his July 19, 2007 decision. We find the record sufficient to establish the petitioner's good moral character.

Counsel timely appealed. On appeal, counsel claims that the evidence submitted below established the petitioner's eligibility and that the director misinterpreted a Board of Immigration Appeals (BIA) decision addressing documentation of the dissolution of customary marriages in Ghana. *Matter of Kumah*, 19 I&N Dec. 290 (BIA 1985). We agree that the director misinterpreted *Matter of Kumah*, although we concur with the director's ultimate determination that the petitioner failed to establish a qualifying relationship with a U.S. citizen and eligibility for immediate relative classification based on such a relationship. We affirm the director's determinations on the remaining grounds discussed in his July 19, 2007 decision.

#### *Qualifying Relationship*

The petitioner submitted the following evidence relevant to his claim that he had a qualifying spousal relationship with a U.S. citizen:

- A certified copy of the petitioner's certificate of marriage to A-H- on July 5, 2002 issued by the Superior Court of Maricopa County, Arizona;
- The petitioner's initial, undated declaration, his response to the November 20, 2006 RFE and his rebuttal to notification from the Chandler, Arizona Police Department that his wife had accused him of fraud, forgery and bigamy;
- Photocopy of an order dated November 28, 2002 of the Circuit Court B in Accra, Ghana confirming the customary dissolution of the marriage between the petitioner and his former spouse on December 15, 2001;
- Photocopy of a certification of the veracity of the signatures of the Circuit Court judge and registrar on the November 28, 2002 order from the Deputy Judicial Secretary of the Judicial Service of Ghana dated November 29, 2002;
- Photocopy of the certification of the signatures on both the Circuit Court order and the November 29, 2002 certification by the Acting Director of the Legal and Consular Bureau of the Ministry of Foreign Affairs of Ghana that is dated December 2, 2002;
- A printout of the visa reciprocity schedule for Ghana from the U.S. Department of State regarding documentation of dissolution of marriage in Ghana;
- A letter dated May 15, 2007 from the Embassy of Ghana regarding the validity of customary marriages and their dissolution; and
- A printout from <http://www.poline.org> entitled "Customary Marriage and Divorce (Registration) (Amendment) Law, 1991.

The Circuit Court order states that upon reading the joint affidavit of the fathers of the petitioner and his former spouse and after hearing the presentation of counsel for the former couple, the court "CONFIRMED that the marriage contracted on the 26<sup>th</sup> day of July, 1993 was customarily dissolved on the 15<sup>th</sup> day of December, 2001" (emphasis in original) and that the order was "made under Section 41(2) of the Matrimonial Causes Act of 1971 (Act. 367)."

The Department of State reciprocity schedule for Ghana, last updated on June 8, 2006 and incorporated into the Foreign Affairs Manual (FAM), states:

Proper documentation of the dissolution of a customary marriage is a decree, issued by a high court, circuit court or district court under the Matrimonial Causes Act of 1971 (Act 367), Section 41(2), stating that the marriage in question was dissolved in accordance with customary law. Affidavits or "statutory declarations" attesting to a divorce under customary law, even when duly sworn, do not constitute proper documentation of the dissolution of a Ghanaian customary marriage.

The Circuit Court order appears to satisfy this standard.

In *Matter of Kumah*, the Board cited this guidance from the Department of State (recently amended at the time of the Board's decision) and determined that "a court decree which either grants or confirms a Ghanaian customary divorce [is] an essential element of proof in substantiating a claimed customary divorce." *Kumah*, 19 I&N Dec. at 294.

The director found the Circuit Court order insufficient to establish the termination of the petitioner's prior marriage and his qualifying relationship with A-H- for four reasons, all of which are mistaken. First, the director equated the Circuit Court order with an affidavit or "statutory declaration" deemed insufficient by the FAM because the order was based on the affidavit of the fathers of the petitioner and his former wife. The Circuit Court order states that the judge's decision was based on assessment of the joint affidavit of the former couple's fathers and the presentation of the former couple's counsel. Because the order was based, in part, on written testimony does not render the order itself an affidavit. The order is also not a mere statutory declaration because it states, albeit cursorily, the basis for the judge's decision, was issued by the Circuit Court and appears to have been certified in accordance with 8 C.F.R. § 287.6 (regarding the proof of official records from foreign countries).

Second, the director found that even if valid, the Circuit Court order would only establish the customary divorce as of the date of the order, November 28, 2002, which was over four months after the petitioner's marriage to A-H on July 5, 2002. The director stated, "the decision not to retroactively recognize the alleged date of the customary divorce was cited in *Matter of Kumah*." The director misreads *Kumah*, which says nothing about the effective date of a customary divorce in Ghana. Rather, the Board acknowledged that "court decrees confirming a customary divorce are not issued contemporaneously with the customary divorce proceedings due to the very nature of the customary divorce and that such court decrees of confirmation are issued in part on the basis of witness statements provided by [family] members." *Id.* at 295.

The director further misread *Kumah* as holding that Ghanaian court decrees confirming a customary divorce are "not deemed to be conclusive proof of the facts certified therein because of the potential for fraud and error in their issuance." The Board did not deem as inconclusive all Ghanaian court decrees confirming a customary divorce. Rather, the Board indicated that such decrees would be insufficient

when “[i]t is reasonable to suspect fraud or mistake where the facts recited on the court decree of confirmation are contradicted by other evidence of record and the discrepancies have not been satisfactorily explained by the petitioner.” *Id.* The director cited no such contradictions or discrepancies and we have found none in our review of the record. Accordingly, we withdraw the director’s findings regarding the Circuit Court order.

However, we concur with the director’s ultimate determination because the record contains no evidence of the U.S. citizenship of the petitioner’s spouse. In his initial declaration, the petitioner simply stated that he was “married to an abusive United States Citizen, [A-H-] (Born in Lafayette, Louisiana).” The petitioner provided no further, pertinent information. A search of Citizenship and Immigration Services (CIS) electronic records also provided no evidence that the petitioner’s spouse is a U.S. citizen. Accordingly, the petitioner has failed to establish that he has a qualifying spousal relationship with a U.S. citizen, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

#### *Eligibility for Immediate Relative Classification*

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 relationship to the abusive, U.S. citizen spouse. The petitioner has not established that his wife is a U.S. citizen or, as will be discussed below, that she subjected him to battery or extreme cruelty. Hence, we concur with the director’s determination that the petitioner has not demonstrated his eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

#### *Battery or Extreme Cruelty*

We also affirm the director’s determination that the petitioner failed to establish the requisite battery or extreme cruelty. The petitioner submitted the following evidence relevant to his claim of abuse:

- The petitioner’s initial, undated declaration, his response to the November 20, 2006 RFE and his rebuttal to notification from the Chandler, Arizona Police Department that his wife had accused him of fraud, forgery and bigamy;
- The December 6, 2004 letter and February 24, 2005 report of Dr. [REDACTED] regarding the petitioner’s mental health;
- Copies of electronic mail messages purportedly sent to the petitioner from his wife;
- Copy of the petitioner’s April 13, 2004 letter to his wife;
- November 26, 2004 and March 9, 2007 statements of the petitioner’s friend, [REDACTED];
- November 24, 2004 statement of the petitioner’s cousin, [REDACTED];
- The November 23, 2004 and May 15, 2007 statements of the petitioner’s friend, Florence Ganyo;
- March 4, 2007 declaration of the petitioner’s sister, [REDACTED];
- Copies of the petition for and order of protection of [REDACTED] against the petitioner’s wife dated May 16, 2002 and a related letter from a police detective dated August 8,

- 2002;
- Copy of the business card of Officer [REDACTED] from the Chandler, Arizona Police Department referencing a civil report on June 25, 2004; and
  - Copies of the petitioner's bus ticket receipt for travel from Washington, DC to Mesa, AZ on June 7, 2004.

In his initial declaration, the petitioner states that three months after their marriage, his wife became abusive. The petitioner reports that she would spend nights away from their home and controlled his use of their home telephone. When the petitioner got a cellular telephone, he reports that his wife would call every ten minutes to ask his whereabouts, insult him and accuse him of infidelity. The petitioner states that when he complained about her behavior, his wife threatened to report him to immigration authorities.

Specifically, the petitioner states that in January 2003 when he asked his wife about a call she had received from another man, she slapped him on his cheek. However, the petitioner also states that during this period, he and his wife "argued a lot and traded insults" and his testimony does not establish that his wife was the primary aggressor or provide sufficient details regarding the circumstances of the alleged physical altercation. In October 2003, the petitioner reports that his wife left him at home when he was sick and did not return until the next night. When he questioned her, the petitioner states that his wife threatened to shoot him. The petitioner states that he did not see his wife with a gun, but nonetheless believed his life was in danger. The petitioner does not further articulate the basis for his belief. The petitioner explains that he was afraid to call the police because of his immigration status and that before he left his wife she initially refused to give him his passport. The petitioner explains that he hid his wife's purse "to coerce her into releasing [his] documents."

In his rebuttal, the petitioner states that when he returned to his wife's apartment on June 25, 2004 to retrieve his belongings, she refused to cooperate and he called the police who advised him to file a court complaint. The petitioner further indicates that after their separation, his wife left threatening messages on his cellular telephone and reported him to the Chandler, Arizona Police Department "for fraud, forgery, and bigamy." The record shows that the petitioner rebutted his wife's allegations and does not indicate that his wife's accusations resulted in any criminal prosecution against the petitioner.

The remaining, relevant evidence does not fully corroborate the petitioner's claims of abuse. The petitioner's bus ticket receipt shows that he traveled to Mesa, Arizona in early June, but the card of Officer West indicating that a civil report was made on June 25, 2004 does not identify the petitioner or his wife and the petitioner did not submit the referenced report or the complaint he claims to have filed against his wife in court.

The statements of the petitioner's friends and relatives fail to provide sufficient, probative information to support his claim of abuse. Ms. Parbey-Osuman states that she visited the former couple in October 2002 and that the petitioner's wife blocked her access to the telephone, told her to go out to eat and locked up her luggage. While her statements indicate that the petitioner's wife may have mistreated

her, Ms. [REDACTED] does not describe any incidents of abuse of the petitioner by his wife. Mr. [REDACTED] states that the petitioner informed him of the "maltreatment and threats" of the petitioner's wife, but indicates that the only incidents he witnessed were "arguments between them" when he visited and saw the petitioner's wife display a "controlling attitude." Ms. [REDACTED] states that the petitioner told her about the "emotional torture he had endured" during his marriage, but Ms. [REDACTED] does not provide any probative details or indicate that she personally witnessed any incidents of abuse. Ms. [REDACTED] simply explains that she had a disagreement with the petitioner's wife and the petitioner later told her that his wife had asked him to stop visiting her.

Dr. [REDACTED] psychological assessments of the petitioner indicate that the petitioner suffered from depression associated, in part, with his wife's behavior. While Dr. [REDACTED] expertise is not at issue, the doctor's testimony does not establish that the behavior of the petitioner's wife constituted battery or extreme cruelty. In his December 6, 2004 letter, Dr. [REDACTED] states that the petitioner "presented with labile affect particularly when he spoke of his wife's insults" and that the petitioner expressed feelings of helplessness and hopelessness about his professional future originating from "the reported seizure of his vital document[s] by his wife." In his February 24, 2005 report, Dr. [REDACTED] states that the petitioner's score on the [REDACTED] depression test indicated "severe depression." Dr. [REDACTED] also observed that the petitioner was anxious about his wife doing "something to make his life worse."

Ms. [REDACTED] reports that Mr. [REDACTED] who identified himself as the former boyfriend of the petitioner's wife, contacted her and told her that A-H- formerly abused him. However, Mr. [REDACTED] order of protection appears to have been obtained ex parte and the police detective letter indicates that no criminal case arose from the order. Accordingly, the documents are equivocal and do not establish a pattern of violence by the petitioner's wife that continued in their marriage.

The electronic mail messages purportedly from the petitioner's wife also fail to support his claim. The messages were sent by "[REDACTED] <[REDACTED]>" and are addressed to [REDACTED]. The record contains no evidence identifying these electronic mail addresses with the petitioner and his wife. Moreover, the messages contain no abusive language, but instead express the petitioner's wife's desire to reconcile.

Finally, we note that in his handwritten letter to his wife, the petitioner asks his wife to sign "these divorce papers" and states that there is "an injunction restraining" the petitioner's wife from harming him. Yet the petitioner did not submit a copy of the divorce papers or restraining order. 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).

In sum, the weight of the relevant evidence fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's statements regarding his wife's alleged abuse lack sufficient credibility and are not fully supported by the remaining, relevant evidence. Moreover, the statute and regulation require that the spouse committing the qualifying abuse must be a U.S. citizen. Section

204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii); 8 C.F.R. § 204.2(c)(1)(vi). As discussed in the preceding sections, the petitioner has not established the U.S. citizenship of his wife. The petitioner has consequently failed to establish that he was subjected to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

We note that in his response to the second RFE, petitioner's former counsel asserted that determinations of extreme cruelty are nondiscretionary decisions subject to judicial review. The statute, regulations and case law establish the contrary: determinations of extreme cruelty are discretionary. Although the statute and regulations mandate CIS's consideration of "any credible evidence relevant to" the self-petition, they clearly prescribe that "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [CIS]." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

Former counsel relied on the decision of the Ninth Circuit Court of Appeals in *Hernandez v. Ashcroft*, 345 F.3d 824, 833-35 (9<sup>th</sup> Cir. 2003), finding that extreme cruelty can be assessed under objective standards and is a clinical, nondiscretionary determination subject to judicial review. The Fifth and the Tenth Circuits have come to a contrary conclusion. *Wilmore v. Gonzales*, 455 F.3d 524, 527-28 (5<sup>th</sup> Cir. 2006); *Perales-Cumpean v. Gonzales*, 429 F.3d 977, 982-984 (10<sup>th</sup> Cir. 2005). Although both *Wilmore* and *Perales-Cumpean* concerned applications for cancellation of removal, the *Perales-Cumpean* court cited the definition of battery or extreme cruelty for self-petitioners at 8 C.F.R. § 204.2(c)(1)(vi) and found the definition "far from algorithmic" because it "requires consideration of many discretionary factors" and "does not provide a binding, objective standard that would channel the [agency's] discretion in a manner making it subject to judicial review." *Perales-Cumpean*, 429 F.3d at 984. *Accord Wilmore*, 455 F.3d at 527-28.

The Tenth Circuit further held that where the agency's determination of whether a particular act constitutes battery is dependent on a finding that the relevant evidence was not credible, such a determination falls within the agency's discretion and is also not subject to judicial review pursuant to section 242(a)(2)(B)(ii) of the Act. *Perales-Cumpean*, 429 F.3d at 984-85. Hence, we reiterate our determination (and that of the director) that the petitioner did not submit sufficient, credible evidence to establish his wife's battery or extreme cruelty. We note that to date, the petitioner has been afforded three opportunities to submit additional documentation or testimony to support his claim of abuse.

#### *Good Faith Entry into Marriage*

We concur with the director's determination that the petitioner failed to establish the requisite good-faith marriage. The petitioner submitted the following relevant evidence:

- The petitioner's initial, undated declaration, his response to the November 20, 2006 RFE and his rebuttal to notification from the Chandler, Arizona Police Department that his wife had accused him of fraud, forgery and bigamy;
- Copies of electronic mail messages purportedly sent to the petitioner from his wife;

- Copy of the petitioner's April 13, 2004 letter to his wife;
- The aforementioned statements of the petitioner's friends and relatives: Mr. [REDACTED] Ms. Amoah, Ms. [REDACTED] and Ms. [REDACTED];
- Photocopy of a blank check for the petitioner's individual bank account; and
- Photocopies of eight carbon copies of checks allegedly drawn on the petitioner's account between September 2002 and May 2003 with notations regarding the automobile insurance policy of the petitioner's wife.

In his initial declaration, the petitioner states that he met his wife in November 2001 while "surfing the web" during "moments of loneliness." He states that they soon spent "long hours on the phone and or on the Internet" and he felt he had found his "soul mate." The petitioner states that the couple decided to get married in March 2002, he moved to Arizona to join his wife the following month and they were married in July 2002. The petitioner states, "In the beginning, everything was fine and I was beginning to think I was the happiest man on earth." The petitioner does not further describe the former couple's courtship, wedding, or any of their shared marital experiences, apart from his wife's alleged abuse.

The statements of the petitioner's friends and relatives also fail to provide sufficient, probative testimony to support his claim. Mr. [REDACTED] states that he met the petitioner and his wife in 2002 and the couples became "family friends" who "exchanged visits." Most of Mr. [REDACTED] statements concern the alleged abuse of the petitioner's wife and do not describe any particular incidents where he observed the former couple's marital relationship. Ms. [REDACTED] states that she spoke to the former couple over the telephone on several occasions during their marriage, but that she did not attend their wedding and never visited them. Ms. [REDACTED] states that she witnessed the petitioner's marriage, but she does not provide any probative details regarding the behavior or interactions of the petitioner and his wife before, during or after their marriage except to explain the conflict between herself and the petitioner's wife. The declaration of the petitioner's sister only discusses the unkind actions of the petitioner's wife against her and includes no probative testimony regarding the former couple's marital relationship or the petitioner's intentions in entering the marriage.

The electronic mail messages purportedly from the petitioner's wife may indicate her efforts to reconcile with the petitioner, but they do not demonstrate the petitioner's own good-faith regarding their marriage. The petitioner submitted no evidence of his response to any of his wife's alleged messages. The only documentation of the petitioner's correspondence with his wife over the course of their relationship is the single letter dated April 13, 2004, which is not postmarked and in which the petitioner expresses his wish to divorce his wife. Moreover, the electronic mail messages and the petitioner's letter are dated after the former couple's separation and are not indicative of the petitioner's intentions prior to the breakdown of their relationship.

The copies of the blank check and carbon copied receipts are of little probative value. The petitioner does not submit the corresponding cancelled checks, bank statements or other evidence that the checks were cashed. The petitioner submitted no other documentary or testimonial evidence of his allegedly good-faith entry into marriage with his wife of the types listed in the regulation at 8 C.F.R.

§ 204.2(c)(2)(vii) and described in the director's RFEs and NOID. The petitioner states that after their separation, his wife did not let him retrieve his belongings, which included photographs of their wedding and correspondence during their courtship. The petitioner does not describe however, any other evidence of the former couple's joint assets, liabilities, or other shared responsibilities and experiences that were retained by his wife; nor does the petitioner explain that such evidence was unavailable from third parties.

The weight of the relevant evidence does not establish that the petitioner 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*

We affirm the director's conclusion that the petitioner did not establish his residence with his wife. The petitioner submitted the following evidence relevant to this issue:

- The petitioner's initial, undated declaration, his response to the November 20, 2006 RFE and his rebuttal to notification from the Chandler, Arizona Police Department that his wife had accused him of fraud, forgery and bigamy;
- The aforementioned statements of the petitioner's friends and relatives: Mr. [REDACTED] Ms. Amoah, Ms. [REDACTED] and Ms. [REDACTED]; and
- March 8, 2007 declaration of the petitioner's friend Theodore Lagble.

On the Form I-360, the petitioner indicated that he lived with his wife from May 2002 until November 2003 and that their last joint residence was on North Nevada Street in Chandler, Arizona. In his initial declaration, the petitioner states that he first lived with his wife at a motel in Ahwatukee, Arizona in April 2002 until they moved into an apartment in Chandler, Arizona in early May 2002. The petitioner does not further describe either of the former couple's allegedly joint residences.

The statements of the petitioner's friends and relatives also lack probative details to support the petitioner's claim. Mr. [REDACTED] states that he visited the former couple at their North Nevada Street residence, but he does not describe their home or any of his visits in probative detail. Ms. [REDACTED] states that she spoke to the former couple on several occasions, but indicates that she never visited their home. Ms. [REDACTED] attests to her acquaintance with the couple, but also does not state that she ever visited their residence. Ms. [REDACTED] describes her brief, unpleasant visit to the couple's home but does not describe their residence in any probative detail. Mr. [REDACTED] states that he once visited the former couple, but also fails to provide any detailed information regarding their purportedly shared residence.

The petitioner submitted no further evidence of his residence with his wife of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii). 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 weight of the relevant 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.

The petitioner has not established that he had a qualifying spousal relationship with his U.S. citizen wife, that he was eligible for immediate relative classification based on such a relationship, that his wife subjected him to battery or extreme cruelty during their marriage and that he entered into their marriage in good faith and resided with his wife. The petitioner is consequently ineligible for immigrant classification under 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.