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U.S. Citizenship  
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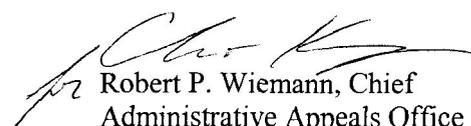
Petitioner:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

The director denied the petition finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage.

The petitioner, through counsel, submits a timely appeal with additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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

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

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . 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.

\* \* \*

(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 pertinent facts and procedural history. The petitioner is a native and citizen of the Dominican Republic. The petitioner entered the United States on February 7, 2005 as a nonimmigrant fiancé (K-1), with authorization to remain until May 6, 2005. On March 14, 2005, the petitioner married N-M,<sup>1</sup> a United States citizen in Massachusetts. On May 31, 2005, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 was administratively closed on February 10, 2006. The Form I-485 was denied on March 28, 2006. On March 28, 2006, Citizenship and Immigration Services (CIS) issued a Notice to Appear (NTA) to the petitioner charging him as removable under section 237(a)(1)(B) of the Act for having remained in the United States beyond his period of authorized stay. He remains in proceedings and his next hearing is scheduled for April 8, 2008.

The petitioner filed the instant Form I-360 on June 26, 2006. The director issued a Request for Evidence (RFE) on January 19, 2007 of, *inter alia*, the requisite abuse. The petitioner, through counsel, timely submitted a request for additional time to respond to the RFE. On May 1, 2007, the director issued a Notice of Intent to Deny (NOID) the petition, notifying the petitioner of the deficiencies in the record and affording him the opportunity to submit further evidence to establish, *inter alia*, his claim of abuse. The petitioner timely responded to the NOID with additional evidence. After reviewing the evidence contained in the record, including the evidence submitted in response to the NOID, the director denied the petition on July 2, 2007, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage. The petitioner, through counsel, submits a timely appeal, with copies of documents previously submitted, and argues that the evidence supports a finding that the petitioner was subjected to extreme cruelty during his marriage.

As will be discussed, upon review, we concur with the findings of the director that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage. Additionally, beyond the decision of the director, we find that the petitioner failed to establish that he entered into his marriage in good faith.

#### *Battery or Extreme Cruelty*

To support his claim of abuse, the petitioner submitted two personal statements, statements from friends,<sup>2</sup> documents related to his mental health treatment at a community health center, and the

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

<sup>2</sup> We note that even if these statements contained sufficient probative details of the petitioner's claimed abuse, the statements would be afforded no evidentiary weight because they do not comply with the regulation at 8 C.F.R. § 103.2(b)(3) which requires that any document containing foreign language that is accompanied by a full English language translation also requires certification by a competent translator that the translation is complete and accurate.

answer to his spouse's divorce complaint. In his June 21, 2006 affidavit, the petitioner generally claims that after their marriage, his spouse began a "regular pattern of verbal, physical and mental abuse . . . ." The petitioner further claims that in the winter of 2005 and 2006 his spouse began a "pattern of erratic behavior whereby she would verbally abuse and threaten [him] with physical harm . . . deny [him] access to [their] mailbox . . . [and] forged [his] name on important documents . . . ."

In his April 24, 2007 affidavit, the petitioner reiterates the claims made in his initial affidavit and further states that his spouse would "constantly demand all of [his] money," would take money from his wallet and pockets, and that there was no food in the house. In addition, the petitioner claims that his spouse refused to give him their daughter's birth certificate and social security number and hid his passport in order to "further isolate" him. The letter from [REDACTED] states that when the petitioner began living with his spouse's family, they "didn't give him meals" and "treat[ed] him bad." [REDACTED] also claims that the petitioner's spouse would not give the petitioner the key to the mailbox and that she wanted the petitioner to "pay all her debts." The letter from [REDACTED] states that the petitioner does not seem to be as happy as he used to be and claims that the petitioner told him that his spouse changed and "has an abusive behavior . . . [and] doesn't respect him."

The petitioner's April 22, 2006 evaluation at the Community Health Center, completed by [REDACTED] LICSW, indicates that the petitioner and his spouse had a "good marriage" and "separated because of conflict with mother-in-law." The evaluation does not describe any physical threats, or physical, mental, or verbal abuse perpetrated against the petitioner by his spouse. In her April 24, 2006 case conference notes, [REDACTED] indicates that the petitioner suffers from depression with sleep and appetite disturbance, but attributes his symptoms to the petitioner's "separation from wife." In her February 15, 2007 letter, [REDACTED] states:

[The petitioner] reports that his psychological symptoms began in February of 2005, when he and his wife had just moved to the United States, and worsened in August of 2005, when he and his wife separated.

\* \* \*

He has been married twice, and is in the process of divorcing his second wife due to conflict with his mother in law.

In his answer to his spouse's divorce complaint the petitioner indicated that he left his marital home because of "an irretrievable breakdown" of his marriage and because of his spouse's "pattern of verbal and emotional abuse . . . ." The document, however, contains no specific description of the alleged verbal and emotional abuse and makes no mention of physical abuse. Further, the petitioner does not indicate whether his spouse countered the contentions made in his answer and the record does not contain a copy of the divorce decree to show whether the final decree made any findings regarding the petitioner's allegations of abuse.

Upon review, we concur with the director's finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse. First, although the petitioner generally claimed in his June 21, 2006 affidavit that he was physically abused on a regular basis, the petitioner does not provide any probative details of threats of or actual physical abuse perpetrated against him by his spouse. The remaining testimonial evidence from his friends, the documents from his treatment at the Community Health Center and the answer to his divorce complaint contain no reference to any alleged physical abuse.

The petitioner's allegation of verbal abuse is based upon the claim that his spouse took his money, did not cook him dinner, hid documents from him, would not give him a mail key, and forged his signature. The petitioner provides no specific details regarding any particular event except for the single instance in which his spouse stated that she "was the boss." The fact that the petitioner took money from the petitioner's pockets and wanted him to pay her debts is not sufficient evidence to establish that the petitioner's spouse exerted any economic control over the petitioner. In fact, contrary to his claims of "economic coercion," the record demonstrates that the petitioner had full-time employment and his own separate bank account, facts indicating that he had access to and control over his own money. As described, the petitioner's claims do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The letters submitted on the petitioner's behalf offer no further probative details of extreme cruelty. Similarly, the evaluation and recommendation of [REDACTED] provides no evidence to support the petitioner's claims of abuse. Instead, [REDACTED] indicates that the petitioner's depression and sleep and appetite disturbances are due to the petitioner's problems with his mother-in-law and his separation from his spouse. We note that the references to the petitioner's treatment by his spouse's family in [REDACTED]'s letter and in [REDACTED]'s documents are not sufficient to establish a claim of abuse. The record contains no evidence that the petitioner's spouse instigated, actively condoned or was otherwise a proximate cause of the alleged abuse by her family. Both the statute and the regulation require that the abuse be perpetrated against the petitioner *by his or her spouse*, not a third party. See Section 204(a)(1)(A)(iii)(I)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb), 8 C.F.R. § 204(c)(1)(vi).

Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Faith Entry into Marriage*

Beyond the decision of the director, we find the petitioner has also failed to establish that he entered into his marriage in good faith. 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). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In his initial affidavit, dated June 21, 2006, the petitioner states that he met his spouse in the Dominican Republic. The petitioner reports that in 2002, he "began a courtship with [N-M-] and as a result of that courtship, she became pregnant with [his] [d]aughter." After their daughter was born, the petitioner states that N-M- "wanted [him] to move to the United States so that they could be together as a family." The petitioner fails to explain his *own* feelings regarding their marriage and simply concludes, "I entered into the marriage with [N-M-] in good faith . . . the marriage was consummated." The petitioner does not provide any further probative details regarding his nearly three-year courtship, his feelings for his spouse and their daughter or his intent in marrying his spouse. The petitioner's April 24, 2007 affidavit provides no further probative details to support his claim of good faith marriage. The statement from [REDACTED] provides only a brief reference to the petitioner's courtship noting that "they went out in different[sic] occasions and falling in love, she was pregnant and have a daughter... I know that she was falling in love with him . . . ." The statement from [REDACTED] indicates that he visited the petitioner and his spouse and "observed [her] good behavior" with the petitioner. Although [REDACTED] states that after the birth of the petitioner's daughter he decided to live in the United States, [REDACTED] offers no further description of the petitioner's interactions with his spouse or his feelings for his spouse to support a finding of the petitioner's good faith in entering his marriage. The evaluation from [REDACTED] generally describes a "good marriage" but offers no probative details regarding the petitioner's relationship with his spouse.

The remaining, relevant evidence consists of four photocopied photographs and a single bank statement from Citizens Bank, and the petitioner's daughter's birth certificate. The petitioner fails to describe the photographs, the date, time and importance of the pictured events, or to provide any other information about the photographs to establish their relevance to his claim of a good faith marriage. The bank statement is in the petitioner's name only and is dated September 2005, one month *after* the petitioner's separation from his spouse.

As discussed above, the testimonial evidence submitted by the petitioner and on his behalf contains few probative details to support the petitioner's claim of a good faith marriage. The evidence lacks details of the petitioner's courtship with his spouse, shared events, descriptions of their interactions, the petitioner's feelings toward his spouse and their child, or other evidence to support a finding of his good faith marriage. The documentary evidence is similarly lacking. Although we acknowledge that the petitioner and his spouse did produce a child from their relationship, the child was born in October 2003, nearly a year and a half before the petitioner came to the United States and married his spouse. The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage. *See Bark v. INS*, 511

F.2d 1200 (9th Cir. 1975). Given the lack of testimonial and documentary evidence, the fact that the petitioner fathered a child seventeen months *prior* to his marriage, by itself, does not sufficiently establish that the petitioner intended to establish a life with his spouse at the time of their marriage and that he entered into his marriage in good faith.

Accordingly, we hereby withdraw the director's determination on this issue and find that the petitioner failed to establish that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied for the two reasons stated above, 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.