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**U.S. Citizenship
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FILE:

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Office: VERMONT SERVICE CENTER

Date: **APR 06 2009**

IN RE:

Petitioner:

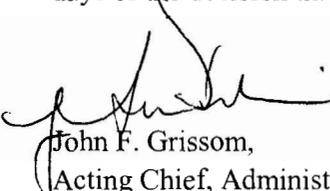
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom,
Acting 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 United States citizen.

The director denied the petition, determining that the petitioner failed to establish that he had entered into the marriage in good faith.

On appeal, counsel submits a brief.

The AAO concurs with the director's determination that the petitioner has not established that the petitioner entered into the marriage in good faith. The AAO also finds, beyond the decision of the director, that the petitioner has not established the requisite battery or extreme cruelty and has not established that he resided with the claimed abuser.

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, 8 U.S.C. § 1154(a)(1)(J), 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 explained 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 explained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

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

* * *

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

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal

documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

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

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Morocco. He entered the United States on an F-1 student visa to study at the University of North Texas in Denton, Texas. He entered on September 25, 2001 at New York City. The petitioner did not become a student at the University of North Texas. He did not travel to Texas but moved immediately to Colorado. He did not amend his Form I-20 and did not attend school in Colorado. He married C-M-,¹ a United States citizen on April 18, 2002 in Aurora, Colorado. C-M- filed a Form I-130, Petition for Alien Relative, dated April 3, 2002. In a G-325A, Biographical Information, signed by the petitioner on April 30, 2002, the petitioner listed his address² on ██████████ ██████████ in Denver, Colorado from September 2001 to the date on the Form G-325A. The Form I-130 was approved on September 10, 2003. The petitioner was arrested for a NSEERS violation on January 2, 2003 and was placed in proceedings. After several hearings and interviews the Form I-130 petition was revoked when C-M- withdrew the petition. C-M-, however, filed a second Form I-130 dated January 28, 2005, which was approved in April 2005. The record includes a second Form G-325A dated February 8, 2005 wherein the petitioner lists the following addresses: ██████████ from September 2001 to July 2002; ██████████ from July 2002 to January 2003; ██████████ from January 2003 to October 2003; ██████████ from October 2003 to May 2004; ██████████ from June 2004 to December 2004; ██████████ from December 2004 to the date of the Form G-325A.

The petitioner filed the Form I-360, on February 17, 2005. The petitioner indicated that he resided with

¹ Name withheld to protect individual's identity.

² Partial addresses used to protect locations.

C-M- on from April 2002 until present.³

The director issued a Notice of Intent to Deny (NOID) the petition on November 10, 2005. The director notified the petitioner that the record included the following information:

- On January 2, 2003 when the petitioner was arrested for the NSEERS violation, the petitioner was unable to give the investigating officer any information regarding his spouse's whereabouts, where she worked, or how she could be contacted;
- On April 5, 2004, at the petitioner's immigration hearing, he indicated that he had filed a missing person report for his wife on March 31, 2004; The March 31, 2004 missing person's report indicated that the petitioner told police that his wife had been missing since around February and that when asked about tattoos on his wife's body, he told the police that she had some unknown tattoos on her right upper arm; The petitioner's spouse actually has tattoos on her abdomen, back, right hand, left hand, right arm, and left arm;
- On September 10, 2004, the petitioner's spouse appears at the petitioner's immigration hearing, but disappears while he is testifying;
- On September 13, 2004, at the reset immigration hearing, the petitioner's spouse fails to appear;
- On October 5, 2004, the petitioner's spouse appears at the petitioner's immigration hearing and is sequestered while the petitioner testifies, that the petitioner is unclear about the tattoos on his wife's body and three times under oath the petitioner declares that his wife does not have any tattoos on her abdomen. At the same hearing, the petitioner's wife testifies and indicates that she has a tattoo on her abdomen.

The director notified the petitioner that the discrepancies in his testimony regarding his wife's tattoos and his inability to describe the tattoo on her abdomen and his incomplete description of the other tattoos on her body raised questions regarding the *bona fide* marriage between the petitioner and C-M-.

The petitioner provided a response; however upon review of the evidence in the record, including the evidence submitted in response to the NOID, the director denied the petition on December 11, 2006. The director determined that the petitioner's inability to provide accurate information regarding his wife's tattoos casts doubt as to the credibility of the petitioner's claim that the marriage was a good faith marriage.

On appeal, counsel for the petitioner asserts that the existence of a *bona fide* marital relationship is determined by whether the bride and groom intended to establish a life together at the time they were

³ The word "present" is marked through with red ink and a notation "wife left him, whereabouts unknown" is written in red ink on the Form I-360. The date of the amendment to the Form I-360 is not included after the notation.

married, citing *Matter of Laureano*, 19 I&N Dec. 2-3 (BIA 1983). Counsel also notes that the BIA included types of evidence to be used to establish a couple's intent in the *Laureano* decision. The BIA list includes the same information codified in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Counsel asserts that the failure of the petitioner to notice, recollect and/or distinguish a tattoo from many other tattoos on his wife's body is irrelevant to the intent of the parties at the time of marriage, especially when the mental health illness of the petitioner's wife was intermixed with her cocaine addition ten months after the parties' matrimony.

Upon review of the evidence in the record including counsel's assertions on appeal, the AAO concurs with the finding of the director that the petitioner failed to establish that he entered into his marriage in good faith. Beyond the decision of the director, the AAO determines that the petitioner has not established that he was battered or subjected to extreme cruelty by his spouse during their marriage. The AAO further finds that the petitioner has not established that he resided with the claimed abuser.

Good Faith Entry into Marriage

At the time of filing, the petitioner submitted an undated personal statement indicating that he had been married to C-M- for close to three years. The remainder of the petitioner's statement relates to the abuse the petitioner claims he was subjected to by C-M-. The record also includes an April 6, 2005 letter signed by the petitioner's brother. The petitioner's brother indicated that he has known C-M- since the petitioner began dating C-M- and that at first C-M- seemed to care for the petitioner and was very loving towards him. The record also includes the petitioner's interview with a United States Citizenship and Immigration Services (USCIS) officer wherein the petitioner declares that he met C-M- at a birthday party, they had their first date a week later in December 2001 at a Starbucks or at a movie, and that they dated one or two times a week prior to their marriage in April 2002.

To establish that he entered into the marriage in good faith, the petitioner also submitted:

A photocopy of a May 26, 2004 bill for utility service from June 1, 2004 to May 8, 2004 [sic] at the [REDACTED] address. The bill does not include C-M-' name. A second photocopy of a June 24, 2004 bill for utility service from June 1, 2004 to June 8, 2004 at the [REDACTED] address. The bill includes both the petitioner and his spouse's name. Subsequent photocopied bills for utility service dated July 23, 2004, August 25, 2004, September 27, 2004, October 28, 2004, November 23, 2004, and December 28, 2004 also include both the petitioner and his spouse's name.

- Photocopies of June and July 2003 Comcast bills addressed to both the petitioner and his spouse at the [REDACTED] address.

Photocopies of July through December 2004 Comcast bills addressed to both the petitioner and his spouse at a post office box.

A photocopy of a lease dated June 3, 2004 for the [REDACTED] address signed by both the petitioner and his spouse; a photocopy of a lease dated January 19,

2003 for premises on [REDACTED] signed by the petitioner and his spouse that contains an addendum dated January 19, 2002. The lease also references the petitioner's brother as an occupant.

October to December 2002 photocopies of Qwest bills that reference the petitioner. Photocopies of January to August 2002 Qwest bills that reference the partial name of the petitioner and the partial name of his spouse. The portion of the bills submitted does not include a mailing address.

- A photocopy of an automobile insurance policy effective September 2002 to March 2003 that names both the petitioner and C-M- addressed to a [REDACTED] address. An automobile insurance policy effective June 2003 to December 2003 noting the insured is the petitioner and is addressed to a post office box. Photocopies of Starfone bills for service from July 2002 to December 2002 addressed to the petitioner and C-M- at a [REDACTED] address; a photocopy of a Starfone bill for service in January 2003 addressed to the petitioner and C-M- at the [REDACTED] address; photocopies of Starfone bills for service from February 2003 to November 2004 addressed to the petitioner and C-M- at a post office box; and photocopies of Starfone bills for service from November 2004 to March 2005 addressed to the petitioner and C-M- at a [REDACTED] address.
- Photocopies of Xcel Energy bills dated in July 2002 to March 2003 addressed to the petitioner and C-M- at the [REDACTED] address; photocopies of Xcel Energy bills dated April 2003 to August 2003 addressed to the petitioner and C-M- at the [REDACTED] address; photocopies of two Xcel Energy bills both dated in July 2004 addressed to the petitioner at the [REDACTED] address; and photocopies of Xcel Energy bills dated in August 2004 to January 2005 addressed to both the petitioner and C-M- at the [REDACTED] address.
- An undated letter on bank letterhead indicating that the petitioner and C-M- have had an account from February 26, 2002 until the present time.
- Uncertified joint Internal Revenue Service (IRS) Forms 1040 for 2002 and 2003 for the petitioner and C-M-.

The record also includes C-M-'s arrest record that shows arrests in May and August 2002 for possession of drug paraphernalia and shows her address as "transient;" an arrest in February 2003 for loitering which shows her address as on [REDACTED] an arrest in January 2004 for prostitution and possession of drug paraphernalia and shows that she claimed her address as "transient." The record also includes a copy of the petitioner's credit report wherein he lists addresses on [REDACTED], [REDACTED], and another address on [REDACTED]. In sworn testimony on December 20, 2004 before a USCIS officer, the petitioner explained that he used those addresses when he co-sponsored a friend on his credit report. The petitioner further explained that his wife is not on his credit report because the only thing they have in common is a bank account. He indicated that he does not remember if his wife ever wrote a check on the bank account or deposited money into the bank account.

The record further includes a police report dated March 31, 2004 and contains the police officer's notes of his interview with the petitioner regarding the petitioner's call to report his wife was missing. The interview occurred at the petitioner's address on [REDACTED] where he resided with his brother. The petitioner reported to the police officer: that his spouse had been missing about a month; that he did not report her missing sooner because she has left before and stayed away for several days to a few weeks; that C-M- suffered from depression, had attempted suicide before, and had been receiving counseling from Denver County Mental Health; that he did not know the location of the office where she received the counseling and did not know the name of the counselor or doctor, that he did not have a telephone number to call and speak with anyone at Denver County Mental Health; and that he did not know how to locate any of her friends.

The record in this matter contains indicia that the petitioner's spouse was intermittently listed on the petitioner's utility services at various addresses, that C-M- was listed on the petitioner's automobile policy for a six-month period, and that C-M- was listed on two different leases for two different locations. The record does not include any detailed information regarding the petitioner's intent upon entering the marriage. The AAO observes that adding individuals to utility accounts, insurance policies, and leases is easily accomplished and although this information may substantiate that an individual's intent in entering into a marriage is *bona fide* and reflective of starting a life together, it may also be manufactured in an attempt to mislead and misrepresent residence for fraudulent immigration purposes.

In this matter, the petitioner has not provided a detailed statement regarding his courtship of C-M-, his subsequent interactions with C-M-, their shared experiences, and ultimately his reasons for entering into a marriage with C-M-. He was unable to describe in detail the petitioner's tattoos and his feelings regarding the tattoos. He was unable to tell a police officer the name of his wife's doctor and/or counselor, or where she attended her counseling sessions. He was unable to tell the police officer the names of his wife's friends or her relatives and where those individuals resided or how they could be contacted. The petitioner was unable to disclose even general information of the couple's life together. The information that is important in establishing intent, the petitioner's personal account of meeting his spouse and their life together, is lacking from the record. It is not only that the petitioner was unable to describe C-M-'s tattoos; it is that the record lacks any information of the time the petitioner spent with C-M-. The record is void of any activities and events and the circumstances surrounding the activities and events that establish that the petitioner and C-M- actually shared a life together. The record does not include sufficient personal information to establish that the petitioner entered into the relationship in good faith.

The AAO does not find that the approval of either Form I-130 evidence that the petitioner entered into the marriage in good faith. The AAO notes that the first Form I-130 was revoked when C-M- withdrew the petition. The AAO further observes that the burden in obtaining approval of a Form I-130 petition is upon the citizen or lawful permanent resident, not the beneficiary of the Form I-130. Thus, the approval of a Form I-130 does not establish the intent of the petitioner in this matter and whether his intent in marrying was in good faith. Accordingly, the record does not establish the

petitioner's good faith and his subsequent eligibility for this benefit, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by the claimed abusive spouse.

In a second personal statement appended to the petition, the petitioner stated that C-M- suffered from "postomatic [sic] stress disorder and manic depression" and was unstable and could be "very abusive and very attacking person and disrespectful by all means." The petitioner added: "[s]he threatened of killing or hurting me on several occasion with no reason because of a lot of her delusions." The petitioner noted that C-M- has a drug and alcohol addiction, that she had been arrested on many occasions for drug related violations during the marriage; and that the abuse reached its extreme extent when she got involved in prostitution which he was told about at a later time. The petitioner stated that the knowledge of C-M-'s criminal background caused him a lot of pain and that he has been living under high stress because of the abuse he has suffered which has resulted in severe anxiety and deteriorating health.

The record also includes the petitioner's brother's letter dated April 6, 2005 wherein the brother stated that he visited the couple many times and noticed C-M-'s bad behavior toward the petitioner including calling him bad names several times. The petitioner's brother also noted that C-M- disappeared from the marital home for several days and the petitioner filed a missing person report and after C-M- showed up they learned that she had been arrested for prostitution and drug possession on many occasions. The petitioner's brother added that C-M- is very moody and delusional and has threatened to kill the petitioner.

The record further includes a handwritten statement on the letterhead of [REDACTED], licensed clinical psychologist, dated February 11, 2005. [REDACTED] indicated that she was seeing the petitioner who is suffering from extreme anxiety due to situational stress and that his marital situation is extremely upsetting and dangerous as his life has been threatened repeatedly.

Upon review of the petitioner's statement and of the two statements submitted on the petitioner's behalf, the AAO finds that the petitioner has not established that he has been subjected to battery or to extreme cruelty. The petitioner's brother stated only generally that he had witnessed C-M-'s bad behavior including name calling. The petitioner's brother does not provide any further details regarding specific instances of battery or any behavior that could be characterized as extreme cruelty toward the petitioner that he personally witnessed. The petitioner's brother indicated that C-M- had threatened the petitioner but does not provide any further information other than that statement. The petitioner's brother's statement does not provide the probative detail necessary to establish that C-M- subjected the petitioner to battery or extreme cruelty.

Similarly, [REDACTED]'s brief letter does not indicate the number of times she has seen the petitioner and she has not provided chronological, clinical, or substantive details of the abuser's alleged abuse

and its effects on the petitioner. does not provide substantive, probative information indicating that C-M-'s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

The AAO has also reviewed the petitioner's personal statements regarding the alleged abuse. The AAO finds again that the petitioner provides general information that provides little chronological timeline regarding the claimed abuse. The petitioner does not provide evidence that he was socially isolated, that he was subjected to verbal abuse, that he was subjected to physical abuse, or provide any of the probative details necessary to assess the veracity of the petitioner's statements. Moreover, the petitioner offers no specific testimonial evidence regarding alleged abuse perpetrated against him by C-M- which demonstrates that her behavior rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Accordingly, the petitioner failed to establish that he was battered or subjected to extreme cruelty by C-M- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

In addition, beyond the decision of the director, the petitioner has not established that he resided with C-M-. The AAO finds that the indicia of the petitioner's claimed residence with C-M- as detailed above does not in this matter substantiate that the couple ever resided together. The AAO notes that C-M- did not claim a marital residence when she was arrested. The photocopies of the petitioner's bills intermittently identify C-M- as also being on the various accounts. The petitioner's credit report includes many addresses that he claims are for friends he sponsored to obtain credit. The record does not contain consistent evidence establishing the petitioner's actual addresses and no actual substantive evidence that the petitioner shared any of the addresses with C-M-. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record is insufficient to establish that the petitioner resided with the claimed abuser as required by section 204(a)(1)(A)(iii)(II) of the Act.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.