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Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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APR 21 2009

FILE:

EAC 06 127 50522

Office: VERMONT SERVICE CENTER

Date:

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

The director denied the petition because the petitioner did not establish that he resided with his wife, that his wife subjected him to battery or extreme cruelty during their marriage, and that he married her in good faith.

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

*Evidence for a spousal self-petition –*

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

\* \* \*

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

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

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences.

Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who, according to information in the record, entered into the United States without inspection on January 15, 1988. On February 28, 1997, the petitioner married S-C-<sup>1</sup>, a U.S. citizen, in Houston, Texas. On March 18, 1997, S-C- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on April 3, 2001, due to abandonment. On August 5, 2000, the petitioner was paroled into the United States until February 15, 2001, to resume his adjustment of status. The Form I-485, Application to Register Permanent Residence or Adjust Status, which was filed by the petitioner on March 18, 1997, was denied on August 14, 2000, also due to abandonment. On June 8, 2001, counsel filed a motion to reopen the petitioner's application for permanent residence. On September 2, 2004, the petitioner filed his first Form I-360 (EAC-04-250-52831), which was denied on January 4, 2006, after the petitioner did not respond to the director's Request for Evidence (RFE). The director denied the petition because the petitioner did not establish that he resided with his wife, that his wife subjected him to battery or extreme cruelty during their marriage, and that he married her in good faith. The petitioner also did not provide the director with information regarding the status of his marriage.

The petitioner filed the instant Form I-360 on March 23, 2006 and provided the copies of previously submitted supporting documentation. On July 11, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite joint residency, battery or extreme cruelty, good-faith entry into the marriage, and good moral character. The petitioner, through counsel, requested additional time to respond. The petitioner, through counsel, responded to the NOID with additional evidence. On March 27, 2007, the director found that the petitioner had established his good moral character but denied the petition for lack of, *inter alia*, the requisite joint residency, battery or extreme cruelty, and good-faith entry into the marriage. Counsel timely appealed.

On appeal, counsel claims that the petitioner has met his burden of proof. As supporting documentation, counsel submits excerpts from the publication *Attorneys Medical Advisor* and cites to the additional evidence submitted in response to the director's NOID.

Counsel's claims and the additional evidence submitted on appeal and in response to the NOID fail to establish the petitioner's residence with his wife, battery or extreme cruelty, and his good-faith entry into their marriage.

#### *Joint Residence*

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

On appeal, counsel asserts that additional documentation cannot be submitted because the petitioner's spouse destroyed all of the petitioner's important documents and proof of cohabitation. The record contains the following evidence relevant to the petitioner's claim that he resided with his wife:

- The petitioner's affidavit dated February 12, 2007;
- An affidavit, dated January 23, 2007, from [REDACTED], who states, in part, that he was invited to a barbecue at the petitioner's home when the petitioner's spouse came out and started yelling for everyone to leave;
- An affidavit, dated January 17, 2007, from [REDACTED], stating, in part, that the petitioner's wife moved into the petitioner's home after their marriage, and that two or three months after their marriage, the affiant witnessed an argument between the two in front of the petitioner's house;
- An affidavit, dated January 17, 2007, from the petitioner's brother, [REDACTED] stating, in part, that the petitioner's spouse moved in with the petitioner after their marriage;
- An affidavit, dated January 17, 2007, from [REDACTED] stating, in part, that he was first introduced to the petitioner's spouse at a family party held at the petitioner's house shortly after their marriage;
- Photocopies of two Citibank credit cards in the name of the petitioner's spouse;
- The first page of a 10-page bill from Southwestern Bell, dated January 1, 2000, addressed to the petitioner and his spouse at: [REDACTED];
- The first page of a 4-page bill from MCI, dated August 24, 2002, addressed to the petitioner and his spouse at: [REDACTED];
- The Form I-130, Petition for Alien Relative, filed by the petitioner's spouse on March 18, 1997; and
- The petitioner and his spouse's G-325A, Biographic Information, forms, on which they stated that they resided in an apartment at [REDACTED] in Richwood, Texas from January 1997 until the date the forms were signed on March 12, 1997 and February 28, 1997, respectively.

The AAO acknowledges the petitioner's statement on the Form I-360 that he resided with his wife from February 1997 until January 2000. However, as discussed by the director in his March 27, 2007 decision, the petitioner's evidence of joint residence contains deficiencies, such as why the August 24, 2002 MCI bill is addressed to the petitioner and his spouse at the [REDACTED] address, when the petitioner's spouse reportedly had not lived at the [REDACTED] address since January 2000, more than 2.5 years prior. The AAO acknowledges counsel's assertions on appeal: "The Service with MCI never changed during the period up to and including 2002. . . . and showed that the bonafide of marriage existed prior to separation in January 2000. . . . The preponderance of the evidence shows that the marriage was bonafide." The AAO disagrees with counsel's assertions. On both I-360 forms filed by the petitioner, the petitioner indicated that he resided with his wife from February 1997 until January 2000. The evidence in the record does not corroborate this information. The birth certificate for S-C-'s daughter, [REDACTED], born on

December 31, 1997, reflects S-C-'s address as: Pasadena, Texas. This evidence conflicts with the petitioner's statement on both I-360 forms that he resided with his wife from February 1997 until January 2000. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. at 591 (BIA 1988). The record also contains another unexplained inconsistency regarding the alleged joint address of the petitioner and his spouse. Specifically, on the Form I-130, Petition for Alien Relative, filed on March 18, 1997 by the petitioner's spouse, at Item 20, the last address at which the petitioner's spouse and the petitioner lived together is reflected as "[REDACTED] Freeport, Texas," which is also the address listed for the petitioner on his Texas driver's license that expired on August 24, 1996. However, the "[REDACTED] Freeport, Texas" address is not listed on either the petitioner or his spouse's Form G-325A, Biographic Information, which they both signed in 1997. In addition, none of the affidavits listed above from the petitioner's family and acquaintances states the address and dates of the joint residence or provides any further details. It is noted that the director requested additional evidence of joint residency in a Request for Evidence (RFE) for the petitioner's first Form I-360, including joint leases, mortgages, rental agreements, insurance policies, utility invoices, bank statements, tax records, financial documents, and joint ownership of property. The record, however, contains none of the requested documentation. Counsel's explanation on appeal that additional documentation cannot be submitted because the petitioner's spouse destroyed all of the petitioner's important documents and proof of cohabitation, is equivocal and does not fully resolve the inconsistencies regarding the petitioner and his spouse's addresses from 1997 to 2000, as listed on the I-130 and G-325A forms and the other, relevant, jointly-addressed documents in the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. at 591 (BIA 1988).

In sum, the relevant evidence provides intermittent documentation and contains unresolved inconsistencies regarding the petitioner's alleged residence with his wife. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Good Faith Entry into Marriage*

In his February 12, 2007 affidavit, the petitioner states that he first met his wife at a flea market in Pearland, Texas in 1994, after which they became good friends, dated for two years before becoming

engaged, and then married on February 28, 1997. The petitioner reports that his wife moved into his home after the marriage and soon after there were changes in her behavior, including complaints that, because she married a Mexican, her friends no longer wanted to hang out with her, and her mother did not want to speak to her. The petitioner states that his wife began to see other men and that when she became pregnant by another man, he and his wife separated for a time, but after the birth of the child, his wife returned. The petitioner also states that his wife's drug abuse became more frequent upon her return and that she told him she could not stand living with a "stupid wetback." The petitioner does not further describe his courtship with his wife, their decision to marry, their wedding or any of their shared experiences, apart from the alleged abuse.

In addition to the evidence listed in the preceding section, the record contains affidavits from the petitioner's family and acquaintances submitted as supporting documentation for the petitioner's first I-360 petition, stating, in part, that they all socialized with the petitioner and his wife. However, as discussed in the preceding section, the record contains only intermittent joint documentation and unresolved inconsistencies regarding the petitioner's alleged residence with his wife.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, as discussed above, the petitioner has not fully resolved the inconsistencies regarding his and his spouse's addresses from 1997 to 2000, as listed on the I-130 and G-325A forms and the other, relevant, jointly addressed documents in the record. Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding the courtship with his wife, decision to marry, wedding, and shared residences and experiences, significantly detracts from the credibility of his claim. On appeal, counsel asserts, in part, "Clearly, even if documentary evidence is absent, the individual's statements about the traumatic events provided to therapists constitute sufficient testimony to prove good faith." As discussed in detail herein, the record contains unexplained inconsistencies in both the witnesses' affidavits and the therapists' testimony. In sum, the relevant evidence fails to demonstrate 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.

#### *Battery or Extreme Cruelty*

On appeal, counsel asserts that S-C- emotionally and physically abused the petitioner continuously throughout the marriage. Counsel submits excerpts from a publication entitled *Attorneys Medical Advisor* with highlighted material. We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's affidavit February 12, 2007;
- Affidavits, dated June 15, 2004 and January 23, 2007, from [REDACTED];
- Affidavits, dated June 15, 2004 and January 17, 2007, from [REDACTED];
- Affidavits, dated June 15, 2004 and January 17, 2007, from [REDACTED];
- Affidavits, dated June 15, 2004 and January 17, 2007, from the petitioner's brother, [REDACTED];

- A June 10, 2004 letter from [REDACTED] Adult Counselor-Bilingual, of the Houston Area Women's Center (HAWC);
- A February 10, 2007 memorandum from [REDACTED] in Houston, Texas, stating that the petitioner was being seen by [REDACTED] for psychological evaluation and therapy and that the focus of the therapy is stressful events and workplace trauma that the petitioner has experienced;
- A February 12, 2007 letter from [REDACTED] of Catholic Charities, stating that the petitioner began counseling on October 31, 2006, attends bi-weekly psychotherapy sessions, and is diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood; and
- A letter from [REDACTED] based on an evaluation of the petitioner on February 14, 2007, diagnosing the petitioner with major depressive disorder, acute stress disorder, and generalized anxiety disorder.

In his February 12, 2007 affidavit, the petitioner states that soon after he married his wife, there were changes in her behavior, including complaints that, because she married a Mexican, her friends no longer wanted to hang out with her, and her mother did not want to speak to her. The petitioner also states that his wife would get irritated when he had his friends and family over and that sometimes she would kick everyone out of their house, arguing that she did not want any "wetbacks" in her house. The petitioner reports that on one occasion at his sister's house, his wife called him to the car when she thought they had stayed too long and began punching him in the face. The petitioner also reports another incident during a barbecue at his house, whereupon his wife threw a plate of food at him that hit him in the chest. The petitioner states that at other times his wife threw objects at him, such as a drink and a shoe, and that she also kicked him out of the house, whereupon he would have to stay at a relative's home for a few days up to weeks. The petitioner states that his wife embarrassed and humiliated him in front of his family and friends, that she called him names, and that she would go out and get drunk or high on drugs. The petitioner states that his wife began to see other men and that when she became pregnant by another man, he and his wife separated for a time, but after the birth of the child, his wife returned. The petitioner states that after his wife returned home, her drug use became more frequent and she threatened to have him deported and began staying away from their home for longer periods of time. The petitioner explains that he sought professional help and filed for a divorce.

In his affidavit dated June 15, 2004, [REDACTED] states that he heard the petitioner and his wife argue a few times and that the petitioner's wife became angry, raised her voice at the petitioner, and threatened him with deportation. In his January 23, 2007 affidavit, [REDACTED] states that he witnessed the petitioner's wife yelling at everyone to leave her home during a barbecue at the petitioner's house. [REDACTED] also states that he heard the petitioner and his wife argue a few times, whereupon the petitioner's wife would raise her voice at the petitioner and threaten him with deportation. [REDACTED] reports that on one occasion at the petitioner's sister's house, he witnessed the petitioner's wife punching the petitioner in the face, and another time, he witnessed the petitioner's wife throw a baby bottle at the petitioner when the petitioner did not respond fast enough to the baby's cries.

In his affidavit dated June 15, 2004, the petitioner's brother, [REDACTED] states that he did not know of any physical abuse to the petitioner, that the petitioner was emotionally traumatized due to his wife's affair, and that, the petitioner's wife threatened the petitioner with deportation during their arguments. In his January 17, 2007 affidavit, [REDACTED] again states that he never saw any physical abuse of the petitioner. [REDACTED] also states that the petitioner's wife tried to keep the petitioner from visiting and socializing with his family and that the petitioner's wife threatened to have the petitioner deported if he did not do what she said.

In his June 15, 2004 affidavit, [REDACTED] states that he did not know about any physical abuse to the petitioner, but found him severely depressed, anxious, and worried. [REDACTED] also states that he did not hear the petitioner's wife threaten the petitioner with deportation, but he did hear her say that she was not going to go through with the petitioner's papers anymore. [REDACTED] states that on another occasion, during a party, he heard the petitioner's wife tell the petitioner that if she did not get to go where she wanted, she would not appear for his immigration interview. In his January 17, 2007 affidavit, [REDACTED] states that he went to hang out in front of the petitioner's house about two to three months after the petitioner's marriage, whereupon the petitioner's wife came out screaming at the petitioner and calling him names. [REDACTED] also states that the petitioner stayed at his house on Valentine's Day in 1999, after the petitioner's wife threw her Valentine's gift at the petitioner and kicked him out. [REDACTED] reports that during a party at his house, he saw the petitioner fall to the ground after the petitioner's wife pushed him and stomped out of the house, which conflicts with the [REDACTED]'s June 15, 2004 affidavit, in which he states that he does not know about any physical abuse to the petitioner. [REDACTED] also states that on another occasion, he witnessed the petitioner's wife throw a plate of food and a drink in the petitioner's face. Again, this statement conflicts with [REDACTED]'s June 15, 2004 statement. Such inconsistencies **lessen the evidentiary value of [REDACTED] statements. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).**

In his affidavit dated June 15, 2004, [REDACTED] states that he did not know of any physical abuse to the petitioner by the petitioner's wife. [REDACTED] also states that it is his opinion that the petitioner's marriage broke up when the petitioner found out about his wife's affair with another man. In his January 17, 2007 statement, [REDACTED] provides conflicting testimony. For example, he states that he did not know of any physical abuse to the petitioner but that he did see the petitioner's wife throw a plate of food on his chest, and on another occasion saw a scratch mark on the petitioner's face from the petitioner's wife. [REDACTED] also states that he did not know of any verbal abuse to the petitioner because he does not know English, but that he heard the petitioner's wife call him names in Spanish, like wetback, faggot, and idiot. [REDACTED] concludes that he never personally saw the petitioner's wife physically abuse him except for the food incident. Again, such inconsistencies lessen the evidentiary value of [REDACTED] statements. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any

attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel addresses the inconsistencies in the above affidavits, in part, as follows:

[T]he apparent contradiction is one of perception, not of substance. The prior affidavit was based on generic questionnaire completed by these individuals who live approximately 70 miles from [the petitioner's] counsel's office. The generic questionnaire did not explain that pushing, shoving, or slap on the face constitute abuse. The subsequent affidavits were provided after intense interview in front of the undersigned attorney who demanded that each individual appear in his office for interview. . . . The affidavits are credible, and replace the previous affidavits which contain no details. The second set of statements do not lack credibility, contrary to the adjudicator's opinion.

This office concedes that there are no inconsistencies in the two affidavits from the petitioner's brother, [REDACTED] as [REDACTED] stated in his 2004 affidavit that he never personally witnessed S-C- and [REDACTED] interact; he did not state that he never personally witnessed S-C- and the petitioner interact. We, however, do not agree with counsel's assertion on appeal that there are no inconsistencies in the affidavits of [REDACTED] and [REDACTED]. We also do not agree with counsel's assertion that the 2004 affidavits contain no details and that the 2007 affidavits replace the 2004 affidavits. As discussed in detail above, the 2004 affidavits of [REDACTED] and [REDACTED] conflict with their 2007 affidavits. In 2004, they both specifically stated that they did not know about any physical abuse to the petitioner, and in 2007 they changed their testimony. Counsel's argument that they did not know what constituted physical abuse, is not convincing. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaignena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In addition to the evidence discussed above, the petitioner submitted a June 10, 2004 letter from [REDACTED], Adult Counselor-Bilingual, of HAWC, who states, in part, that the petitioner went to HAWC on May 3, 2001, as a result of the emotional and verbal abuse he suffered while married to his wife, which included "insults, unappreciation of thoughts and feelings, blaming abuse on jealousy, committing adultery and kicking him out the house." [REDACTED] states that the petitioner spoke with her "during his intake counseling session" and that he received individual counseling, but she does not specify the length of her intake counseling session with the petitioner or provide any specifics regarding the petitioner's individual counseling. It is also noted that, as discussed by the director in his March 27, 2007 decision, [REDACTED] does not describe any physical abuse reported by the petitioner. On appeal, counsel states, "The [director's] main bone of contention is that the counseling and report was prepared four (4) years after [the petitioner's] separation from [S-C-]."

The AAO disagrees. As clearly stated by the director in his March 27, 2007 decision, [REDACTED] does not describe any physical abuse reported by the petitioner. On appeal, however, neither counsel nor the petitioner provides any explanation for this inconsistency. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. at 591 (BIA 1988).

The petitioner also submitted a letter from [REDACTED] in Houston, Texas, who states that the petitioner was being seen by [REDACTED] for psychological evaluation and therapy, and that the focus of the therapy is stressful events and workplace trauma that the petitioner has experienced. [REDACTED] also states that the petitioner's past life events including domestic violence will be addressed. On appeal, counsel states, "[The petitioner's] therapy at [REDACTED] specifically include[s] exploration of past events, including domestic violence." The record, however, does not contain any statement from [REDACTED] who purportedly evaluated and provided therapy to the petitioner. As such, there is no evidence of a direct correlation between the petitioner's purported evaluation and therapy by [REDACTED] and the alleged abuse by the petitioner's wife.

The petitioner also submitted a February 12, 2007 letter from [REDACTED], of Catholic Charities, who states that the petitioner began counseling on October 31, 2006, attends bi-weekly psychotherapy sessions, and is diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. [REDACTED] states that the petitioner began counseling to address multiple stressors dealing with past issues, among which he reported experiencing emotional abuse during his marriage to his former wife. [REDACTED] provides no details which indicate her knowledge or belief regarding the petitioner's claimed abuse or any other statement which demonstrates that the petitioner's medical condition is attributable to the claimed abuse by the petitioner's former wife. It is also noted that the petitioner's counseling began more than six years after the petitioner separated from his wife. On appeal, counsel quotes the following from page 44-15 of the publication entitled *Attorneys Medical Advisor*:

Within this model, the length and extent of recovery can be affected by differences in personalities, presence or absence of other traumas to be dealt with, the length of the trauma, the severity of the trauma, whether the victim played a passive or active role, and the age of the victim at the time of the trauma.

It is noted that counsel does not include page 44-14 of the publication and thus it is not clear that the quoted material applies to the petitioner's situation. It is also noted that the paragraph following the quoted material above deals with rape and incest survivors. Again, there is no evidence of a direct correlation between the quoted material and the alleged abuse by the petitioner's wife.

The petitioner also submitted a letter from [REDACTED] based on an evaluation of the petitioner on February 14, 2007, diagnosing the petitioner with major depressive disorder, acute stress disorder, and generalized anxiety disorder. [REDACTED] bases her report on one meeting with the petitioner of unspecified length on February 14, 2007, more than seven years after the petitioner separated from his wife. [REDACTED] reiterates the petitioner's claims that his wife called him names, threw objects at him, and kicked him out of the house. [REDACTED] finds that the petitioner "is currently experiencing a severe level of depressive feelings and a significant level of emotional turmoil including anxiety, worry and increased stress relating to his failure in marriage and undetermined immigration status" and recommends six sessions of individual counseling to assist the petitioner "in his difficult life situation relating to his emotional injury." [REDACTED]'s finding that that petitioner is experiencing depressive feelings and emotional turmoil is noted; she, however, does not provide substantive, probative information indicating that the behavior of the petitioner's wife included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

Apart from [REDACTED] diagnostic impressions, she also reports that the petitioner indicated that he has a thirteen-year-old son and a six-year-old daughter. The petitioner, however, did not claim a son on the I-485, Application to Register Permanent Residence or Adjust Status, which he filed on March 18, 1997. Nor did he claim a son on either of the I-360 petitions that he filed on September 2, 2004 and March 23, 2007, respectively. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, we do not find the petitioner's evidence to be credible or sufficient to meet the petitioner's burden of proof. As discussed above, in the June 10, 2004 letter from [REDACTED] Adult Counselor-Bilingual, of HAWC, [REDACTED] does not describe any physical abuse reported by the petitioner. In addition, the affidavits from [REDACTED] and [REDACTED] provide conflicting testimony regarding the alleged physical abuse by the petitioner's wife. These inconsistencies diminish the evidentiary value of their statements. The petitioner's allegation of extreme cruelty is based upon the claims that his spouse yelled at him, called him names, humiliated him in front of his family and friends, committed adultery, had a baby with another man, and kicked him out of their home. The petitioner also claimed that his wife threatened to have him deported. As described, the actions by the petitioner's wife 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 claims made by the petitioner and the general and conflicting statements submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that his wife's non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner.

Upon review of the record in its entirety, the record does not indicate that the petitioner's wife subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner's wife subjected him to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that he resided with his wife, that he entered into their marriage in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.