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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B4

APR 24 2009

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

EAC 07 033 50211

IN RE: Petitioner: [redacted]

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

ON BEHALF OF PETITIONER:

[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.

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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

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 on December 13, 2007, determining that the petitioner had not established: that he had resided with a United States citizen, that he had been subjected to battery or extreme cruelty by his spouse; and that he had entered into the marriage in good faith.

On appeal, counsel submits additional documentation.

We concur with the director's determination that the petitioner has not established: that he resided with a United States citizen; was subjected to battery or extreme cruelty perpetrated by his spouse, M-L-[1]; and that he entered into the marriage in good faith. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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 also 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

[1] Name withheld to protect individual's identity

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.
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> (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 citizen of Colombia who married M-L-, a United States citizen, on June 26, 1997 in New York. The petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on May 9, 2005, which was denied January 11, 2006 when neither the petitioner nor the petitioner's counsel responded to the director's request for further evidence (RFE). The petitioner filed the Form I-360 that is the subject of this appeal on November 6, 2006. He listed his address as on [redacted] in Queens on both the May 9, 2005 Form I-360 and the current Form I-360 but did not indicate when he resided with the claimed abuser on either petition. The record includes M-L-'s Form G-325A, Biographical Information sheet dated June 27, 1997. M-L-'s addresses are listed as on [redacted] in the Bronx from May 1989 to June 1997 and on [redacted] in Queens from June 1997 to the date of the Form G-325A, also June 1997. The director in this matter issued an RFE on June 4, 2007, requesting information on the petitioner's residence with M-L-, informing the petitioner that the evidence submitted to show that he had been subjected to battery or extreme cruelty was deficient, and requesting documentation verifying that the petitioner married M-L- in good faith. The petitioner provided a response through counsel. Upon review of the evidence submitted, the director denied the petition on December 13, 2007 and counsel timely appealed.

On appeal, counsel asserts: that the director misinterpreted or misunderstood a Verizon letter

regarding the petitioner's address; that this misinterpretation caused the director to find the petitioner not credible; and that the seven-year lapse of time between the abusive behavior and the petitioner seeking therapy should not be viewed negatively. Counsel submits the petitioner's additional affidavit and articles discussing the longer the duration of untreated symptoms of mental illness, the worse the psychiatric outcome.

Residence

The petitioner has submitted the following documentation to establish that he resided with M-L-:

- A photocopy of a Bell Atlantic bill for a period between April 7 and May 6, 1998 addressed to the petitioner at the address.
- A photocopy of a Bell Atlantic bill for a period between June 7 and July 6, 1998 addressed to the petitioner in care of M-L- at the address.
- A photocopy of a Bell Atlantic bill for a period between May 7 and June 6, 1999 addressed to the petitioner in care of M-L- at the address.
- A computer printout of an undated welcoming letter to the petitioner and M-L- for establishing Dish network service.
- A July 1, 2004 Verizon letter addressed to the petitioner in care of M-L- at the address verifying telephone service from October 1995 until June 7, 1999 at the address.
- An October 27, 2006 affidavit signed by who declared that he visited the petitioner and M-L- at their apartment where they lived together as husband and wife.
- An October 29, 2006 affidavit signed by who declares that the petitioner and M-L- lived together in Queens during the week and on the weekends they were in the Bronx taking care of M-L-'s children. states that she knows they lived together because she visited their apartment and saw M-L-'s things there.
- A July 17, 2007 letter signed by the petitioner's counsel stating that the couple "lived together from approximately the end of 1997 until October 2000 at [the address] in Queens."

The record also includes the petitioner's May 5, 2005 and October 20, 2006 personal statements wherein the petitioner indicated that after their marriage, M-L- moved into his apartment on in Queens, where he worked as the "super." The petitioner noted that as M-L-'s sister lived next door to the "Bronx" apartment, M-L-'s children continued to reside there, as his apartment was too small for all of them and they did not want to uproot the children. The petitioner also indicated that sometime toward the end of 2002 he lost his job and his apartment in Queens so they moved all their things out of the Queens apartment to the Bronx in December 2002 before he went to Colombia. The petitioner reported that when he returned from Colombia: there had been a fire at the Bronx apartment; he could not find M-L-, and he had to stay with a friend for a few months. The

petitioner noted that he lost touch with M-L- between 2002 and the spring of 2004 and after they reunited in the spring of 2004 they were together for several months before she abandoned him again. In a January 5, 2008 statement on appeal, the petitioner states: that between 2002 and 2004 he and M-L- separated; when he returned from Colombia he stayed with a friend; in the **spring of 2004** when he and M-L- reunited, they got a place together on ; and remained at the address until she abandoned him in December 2004. The petitioner noted that he continues to reside at the address. The petitioner also provides the Qwest portion of the Bell Atlantic phone bill for the period between April 7 and May 6, 1998 that shows long distance telephone calls to Puerto Rico. The petitioner claims that these calls were made by M-L-.

The AAO has reviewed the telephone bill statements and does not find the petitioner's explanation that the telephone company sent duplicates of telephone bills with the petitioner's updated address but mailed the cover letter to the petitioner's old address on , credible. In addition, the petitioner's addition of M-L- to the telephone service does not establish residence in this instance. The AAO notes for example as late as July 1, 2004, Verizon was sending mail to the petitioner in care of M-L- at the address, an address according to the petitioner and counsel the petitioner left in either 2000 or late 2002. The telephone bills do not provide an accurate picture of where the petitioner resided, where M-L- resided and when these individuals resided at particular addresses. The telephone bills submitted provide inconsistent information regarding the petitioner's and M-L-'s actual address. 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). Moreover, the AAO finds telephone calls to Puerto Rico do not establish that M-L- made those calls from the petitioner's phone and even if she had, making calls from a particular phone does not establish residency.

The AAO finds the petitioner's statements similarly confusing. The petitioner indicates that M-L- stayed with him in Queens during the week and that they stayed in the Bronx on the weekend with her children and that M-L- abandoned him on more than one occasion. The petitioner's statements do not present a clear, consistent chronological timeline of when and where he and M-L- lived for the duration of the qualifying relationship. It is not clear where M-L-'s children stayed, no address is given. We note that counsel informed United States Citizenship and Immigration Services (USCIS) in 2007 that the petitioner and M-L- resided together from the end of 1997 until October 2000 and does not mention the petitioner's claimed continued residence at the address until 2002, when the petitioner went to Colombia. In addition, counsel does not mention the couple's **reunification and claimed residence at the** address in 2004. The petitioner's August 25, 2007 personal statement indicates that the couple lived at the address in Queens from the end of 1997 to October 2000. It is unclear where the couple resided until the petitioner left for Colombia. Similarly, the petitioner's initial May 5, 2005 statement in support of the first-filed Form I-360 does not mention that the petitioner and M-L- reunited and lived at a residence on , but rather indicates once he returned from Colombia he saw her less and less and lost contact with

her. 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. The petitioner's statements do not clarify his residence and do not provide a clear understanding of when and where he allegedly resided with M-L-.

The AAO has also reviewed the affidavit of and the affidavit of and finds that neither affidavit indicates where the couple's apartment is located. Moreover, the affiants do not describe the apartment or provide any probative information that demonstrates that the couple resided together. General conclusory statements that do not provide some chronological timeline and some detail of the claimed joint residence are insufficient to establish residence in this matter.

The record in this matter does not establish that the petitioner and M-L- resided together. For this reason, the petition is not approvable.

Battery or Extreme Cruelty

The AAO has also reviewed the record regarding the petitioner's claim that he was battered or subjected to extreme cruelty. The record includes the petitioner's personal statements dated May 5, 2005, October 20, 2006, August 25, 2007 and January 5, 2008. In the petitioner's May 5, 2005 statement in support of the first-filed Form I-360, he complains: that his wife used drugs and her use of drugs cost him his job as the superintendent of the apartment building where they lived; that she verbally abused him by calling him degrading names and cursing at him; and that when he refused to give her money, she would curse him and hit him with her fists. In subsequent statements, the petitioner added: that when they were dating their lovemaking sometimes resulted in bite marks and bruising; that during the marriage the petitioner also threw things at him; destroyed his work space; and that in addition to his job, he had to do the housework as M-L- refused to do it. The petitioner noted in his August 25, 2007 statement that M-L- humiliated him, made him feel useless, and made him depressed.

In his October 27, 2007 affidavit, declared that M-L- "spoke so badly" to the petitioner and on several occasions he noticed black and blue marks on the petitioner's arms and once the petitioner looked like he had a black eye, but not quite. stated that the petitioner told him that M-L- often pinched him causing bruising on his arms and the black eye was caused from a book M-L- had thrown at the petitioner. In the October 29, 2007 affidavit of , declared that M-L- treated the petitioner in a demeaning way in public, by screaming and cursing at him, and dancing provocatively with other men.

The record also includes a one-page letter on the letterhead of the Western Queens Consultation Center dated August 8, 2007 signed by , staff psychotherapist. noted that the petitioner had weekly brief-psychotherapy treatment from December 26, 2006 to May 2007 due to symptoms associated with generalized anxiety disorder, avoidant personality disorder, and sleeping problems. stated that the petitioner "reported that his Anxiety Disorder/Insomnia would

increase, triggered by conflicts with is wife, financial demands and constant harassment by this woman." On appeal, counsel for the petitioner provided articles discussing the longer the duration of untreated symptoms of mental illness, the worse the psychiatric outcome.

Upon review of the record, the AAO concurs with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The AAO has reviewed the petitioner's statements regarding the alleged battery perpetrated by his wife, involving pinching sufficient to result in bruises. The record does not include any independent evidence of these occurrences sufficient to allow a conclusion that M-L-'s pinching constituted battery. Moreover, the record is not clear regarding the timeframe of the alleged battery and whether this occurred prior to the marriage or during the marriage. The AAO observes that [redacted]s does not indicate that he was a witness to any physical abuse perpetrated by M-L-, but reports only the information the petitioner related to him. The AAO finds there is no independent information establishing the petitioner's claim that he was pinched, hit, or had things thrown at him. The record is thus insufficient to establish that the petitioner suffered battery perpetrated by his spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO also does not find that the M-L- subjected the petitioner to extreme cruelty. The AAO acknowledges that the petitioner's marriage involved turmoil and emotional upset, however, his testimony and the testimony provided on his behalf does not demonstrate that his wife's behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The affidavits of the petitioner's friends indicate that the petitioner's wife resorted to name calling, disparaging remarks, and provocative behavior around other men as well as mentioning her drug abuse. The acts of the petitioner's spouse, as described by his friends although hurtful and unkind, do not rise to the level of extreme cruelty as those acts are 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.

In addition, the petitioner does not provide a detailed chronological timeline of the acts of his wife. As noted above, the petitioner has provided confusing and inconsistent information regarding the time period he was allegedly involved with M-L-. The record is likewise unclear regarding the time frame of the name calling. The petitioner's friends describe generally one or two occasions when the petitioner's wife was demanding and verbally abusive, but do not provide any information regarding threats, physical abuse, or any specific threatening or controlling behavior of the petitioner's wife that includes forced detention, psychological or sexual abuse or exploitation. The record does not provide sufficient probative detail of the acts of M-L- over the indeterminate amount of years the petitioner and M-L- were together to allow the AAO to ascertain that M-L-'s actions subjected the petitioner to psychological, sexual abuse or exploitation or were part of an overall pattern of violence. The record does not include specific details regarding the time of any threats or coercive actions, the number or content of threats or coercive actions, or that the petitioner perceived any of the threats or other actions

against him as serious enough to involve the actions of the police.

As discussed above, the testimony regarding the petitioner's former spouse's non-physical behavior does not indicate that her actions were coercive, threatened actual harm, or were aimed at ensuring dominance or control over the petitioner. The petitioner in this matter has not described in probative detail any specific threatening or controlling behavior of his wife. The record does not include probative evidence that the applicant feared for his life or physical injury. The record does not evidence that the actions of the petitioner's wife resulted in the petitioner's psychological trauma any more than that of any broken marriage between two different individuals with strongly different personalities. The claims made by the petitioner and the general 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 M-L-'s non-physical behavior was accompanied by coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner.

The AAO has reviewed the general statement of the staff psychotherapist and observes that the therapist appears to believe that the petitioner was still experiencing harassment from M-L- when the sessions were conducted from December 2006 to May 2007. This belief is directly contradicted by the petitioner's statements to the USCIS. In addition, the therapist does not offer chronological, clinical, or substantive details of the petitioner's wife's alleged abuse which demonstrate M-L-'s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. The general statements of the psychotherapist are insufficient to establish that the petitioner suffered psychological trauma resulting directly from his wife's behavior. The articles presented by counsel on appeal relating to the long delay of untreated symptoms do not address the underlying generality of the psychotherapist's report and its failure to directly associate specific incidents of abuse to the petitioner's current mental health.

Upon review of the totality of the record, the relevant evidence fails to demonstrate that the petitioner's wife subjected him to battery or 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.

Good Faith Marriage

The AAO has again reviewed the independent documentary information submitted in an effort to ascertain the petitioner's good faith in entering the marriage. The AAO has also reviewed the petitioner's personal statements and the affidavits submitted on the petitioner's behalf. The utility bills do not establish the petitioner's good faith in entering the marriage. As noted above, these documents demonstrate inconsistencies in the record and moreover are not evidence of the petitioner's intent. The petitioner's attempts to explain the utility bills rather than resolving any inconsistencies create further inconsistencies, thus diminishing the probative value of the petitioner's statements. The AAO observes that each of the petitioner's statements regarding his relationship with M-L- seem to present further inconsistencies. The AAO finds that the petitioner's inconsistent statements regarding his residence with M-L- preclude a determination that the petitioner entered

into the marriage in good faith. Again, 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. The petitioner has failed to submit any of the suggested independent evidence that would support a finding that the petitioner entered into the relationship in good faith, such as insurance policies, property leases, certified tax forms, joint bank accounts, medical, police, or court documents. The record does not include any indicia of a couple who married with the intent of establishing a life together.

The general statements made by the affiants who submitted affidavits on the petitioner's behalf likewise fail to assist in establishing the petitioner's good faith in entering into the marriage. The affidavits do not provide the probative details necessary regarding the affiant's observations sufficient to establish the petitioner's good faith entry into the marriage. The affidavits lack information regarding the petitioner and M-L-'s initial courtship and subsequent interactions and the circumstances of the subsequent interactions to establish the *bona fides* of the marriage. The AAO concurs with the director's determination that the petitioner did not establish that he entered into the marriage in good faith.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.