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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

B9

FILE:

[REDACTED]
EAC 06 112 50100

Office: VERMONT SERVICE CENTER

Date: FEB 18 2009

IN RE:

Petitioner: [REDACTED]

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

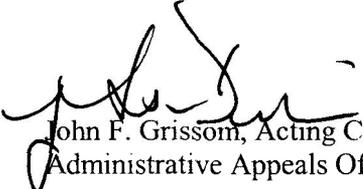
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 or reopen, 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 had a qualifying relationship with a U.S. citizen, that he entered into a qualifying relationship in good faith and that he was battered or subjected to extreme cruelty by the U.S. citizen.

On appeal, the petitioner submits additional evidence.

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

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

Evidence for a spousal self-petition –

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

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

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

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

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

* * *

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

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Pakistan who was paroled into the United States (U.S.) on November 18, 2000. The petitioner initially entered the U.S. on January 27, 1995, as a nonimmigrant visitor (B-1). On January 13, 1998, the petitioner married A-P-¹, a U.S. citizen who is 29 years older than him, in New York. A-P- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on June 13, 2006. The petitioner filed this Form I-360 on March 6, 2006. On June 26, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the legal termination of the petitioner's prior marriage in Pakistan, his entry into marriage with A-P- in good faith and A-P-'s battery or extreme cruelty. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. On February 16, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, a qualifying relationship, good faith entry into such a relationship and battery or extreme cruelty. The petitioner responded to the NOID with additional evidence. On November 1, 2007, the director denied the petition for lack of a qualifying relationship, good faith entry into such a relationship and battery or extreme cruelty.

On appeal, the petitioner reasserts his eligibility and submits copies of his Internal Revenue Service (IRS) tax return transcripts for 2003 to 2006. The petitioner's statements and the evidence submitted on appeal fail to overcome the reasons for denial. The petitioner has also failed to establish that he was eligible for immediate relative classification based on a qualifying relationship with a U.S. citizen and that he resided with his U.S. citizen spouse.

Qualifying Relationship

The director determined that the petitioner had not established a qualifying relationship with A-P- because he did not submit sufficient evidence of the legal termination of his prior marriage. The petitioner submitted a "Notice of Talak (Divorce)" addressed to the petitioner from his first wife which was notarized on January 3, 1997. The Notice states, in pertinent part:

¹ Name withheld to protect individual's identity.

I, [R-M-A-²], . . . hereby give you notice of Talak (Divorce) on behalf of herself under “The Dissolution of Muslim Marriage Act 1939, Under Section 2(i)”

Therefore through this notice I give you Divorce three times inclusive. In future I and you shall be free from each other. Through this notice all marital [sic] relations between you and me shall cease to exist.

In response to the NOID, the petitioner submitted a second copy of this Notice, but no further, relevant evidence.

Primary evidence of a marital relationship includes proof of the termination of all prior marriages of the self-petitioner. 8 C.F.R. § 204.2(c)(2)(ii). A divorce must be valid under the laws of the jurisdiction granting the divorce. *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). As noted by the director, the Foreign Affairs Manual, states that divorce certificates in Pakistan are:

[a]vailable from municipality or union council or (in [REDACTED]) District Mufti. In Pakistan (apart from [REDACTED], divorce is subject to arbitration, while in [REDACTED] the “[REDACTED]” (uncontestable verbal pronouncement of divorce by the husband) is still permitted. Some foreign embassies and Pakistani legal authorities question the validity of the bare talaq if the wife resides outside [REDACTED] and contests such a divorce under the laws prevailing in other areas of Pakistan (Muslim Family Laws Ordinance). . . .

A divorce in Pakistan is not effective and neither party may remarry until 90 days after the divorce has been announced to the arbitration council.

After 90 days, if no reconciliation has taken place, either party may request a certificate from the arbitration council which states that the divorce law is effective and either party may remarry (1961, Muslim Family Laws Ordinance, Section 7). The ordinances state that this applies to “all Muslim citizens of Pakistan wherever they may be.

U.S. Department of State, Bureau of Consular Affairs, *Pakistan Reciprocity Schedule*, http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3644.html (accessed Jan. 30, 2009). The petitioner did not submit a certificate from the relevant arbitration council verifying his divorce in Pakistan. On appeal, the petitioner states:

I did qualify to remarry in America after receiving divorce from my ex-wife with the help of court. According to our religion if the partner says three times divorce, it occurs [sic] and becomes effective. . . . Any time any woman can divorce her husband in Pakistan, no matter husband likes or not.

² Name withheld to protect individual’s identity.

However, section 2(i) of the Dissolution of Muslim Marriages Act of 1939, prescribes that a wife may obtain a divorce from her husband if his whereabouts have been unknown for four years.³ The record shows that the petitioner first entered the U.S. from Pakistan in 1995. Only two years had passed from his departure to the date of the divorce notice, which indicates that the petitioner's first wife had not known of his whereabouts for the requisite four years. The 1939 Act also indicates that a divorce under section 2(i) would be granted by a court or arbitration council. The Notice of Talak (Divorce) submitted by the petitioner is in the form of an affidavit addressed to the petitioner from his former wife and does not appear to be issued by a court or arbitration council. Accordingly, the Notice is not sufficient evidence that the divorce was recognized as valid in Pakistan.

The petitioner has not submitted sufficient proof of the legal termination of his prior marriage, without which he cannot establish the validity of his subsequent marriage to A-P-. Accordingly, the petitioner has failed to demonstrate a qualifying relationship pursuant to section 204(a)(1)(A)(iii)(II) of the Act.

Eligibility for Immediate Relative Classification

Beyond the director's decision, the petitioner has also failed to establish that he was eligible for immediate relative classification based on a qualifying relationship.⁴ The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the petitioner has not demonstrated that he had a qualifying relationship with A-P-. He consequently has also failed to establish that he was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Dissolution of Muslim Marriages Act, 1939, available at: Government of Pakistan, Ministry of Religious Affairs, Zaka and Ushr Division, http://202.83.164.26/wps/portal/Morazu!/ut/p/c/04_SB8K8xLLM9MSSzPy8xBz9CP0os_hQN68AZ3dnIwN312BTAYnTE1MvR0tXA9MQE_2CbEdFALQnDZM!/?WCM_GLOBAL_CONTEXT=/wps/wcm/connect/RAZUDivCL/division/publications/the+dissolution+of+muslim+marriages+act.

⁴ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). See also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See e.g., *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with A-P- in good faith:

- The petitioner's December 11, 2007 letter submitted on appeal;
- Copies of income tax returns and IRS income tax transcripts (submitted on appeal) showing that the petitioner filed joint returns with A-P- from 2003 to 2006;
- Numerous bank statements and copies of cancelled checks from the joint checking account of the petitioner and A-P- dated between February 2005 and March 2007;
- Undated letter from the petitioner's landlord stating that the petitioner and A-P- are living in the basement apartment of his building and do not have a lease; and
- Copies of two photographs of the petitioner and A-P- taken on an unspecified date.

In his December 11, 2007 letter the petitioner states that he picked up A-P- five times when her daughter abandoned her and when she got drunk, that he took his wife to the hospital several times when she was sick and that he helped take care of A-P-'s grandchildren. The petitioner does not describe how he met A-P-, their courtship, wedding, shared residence and experiences (apart from the alleged abuse). The petitioner's brief statements on appeal fail to provide a substantive, detailed description of his intentions in marrying A-P-.

The remaining, relevant documents also fail to establish the petitioner's claim. The IRS transcripts show that the petitioner and A-P- jointly filed tax returns for three years, but the joint returns alone do not show that the petitioner entered into the marriage in good faith. As noted by the director, all of the cancelled checks drawn from the couple's joint account were signed by the petitioner and the statements do not show that the joint account was actually used by both the petitioner and A-P-. On appeal, the petitioner explains that A-P- "did not like to come to withdraw the money. Even she was giving me ATM card to bring the money from ATM machine." Yet the petitioner does not provide any other evidence or give a detailed description of how he and A-P- shared assets or liabilities. The letter of the petitioner's landlord is undated and handwritten with script that resembles the petitioner's own. Even if genuine, the letter provides no substantive information regarding the petitioner's relationship with A-P-. Finally, the two photographs merely show that the petitioner and A-P- were pictured together on one unspecified occasion. On appeal, the petitioner states that A-P- "cut the photographs with the scissors [sic] when she had arguments [sic] with me," yet the petitioner does not describe any occasions where they were photographed together or provide any other substantive testimony to support his claim.

The relevant evidence fails to demonstrate that the petitioner entered into marriage with A-P- in good faith. Apart from the petitioner's failure to meet his burden of proof in regards to his good faith, the petitioner has also failed to establish that he had a valid marriage or qualifying relationship with A-P-, as discussed above. Accordingly, the petitioner has not demonstrated that he entered into marriage with A-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

Beyond the director's decision, the petitioner also failed to establish the requisite joint residence. On the Form I-360, the petitioner stated that he lived with A-P- from July 1997 to March 1, 2006, the date he signed his petition, and that they last resided together at [REDACTED] in Brooklyn, New York. The evidence listed in the preceding section is also relevant to the petitioner's alleged residence with A-P-. The letter from the petitioner's landlord and the tax returns and transcripts are the only documents that list a common residential address for the petitioner and A-P-. The landlord's letter is of little probative value because, as previously discussed, it appears to be written by the petitioner himself and even if genuine, provides no probative information regarding the couple's alleged joint residence. Rather, the letter simply states that the petitioner and A-P- live in a basement apartment and do not have a lease. The bank statements are all addressed to a post office box, not a residential address, and the photographs appear to have been taken in a studio, not a residential setting. In his statements below and on appeal, the petitioner does not describe his shared residence with A-P- in any probative detail.

In sum, the relevant evidence fails to demonstrate that the petitioner resided with A-P-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. Even if the petitioner established that he resided with A-P-, he has not shown that their marriage was valid. Accordingly, he has not demonstrated that he resided with A-P- as his "spouse" pursuant to section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that A-P- battered or subjected him to extreme cruelty:

- The petitioner's June 26, 2006 letter submitted below and his December 11, 2007 letter submitted on appeal;
- A psychiatric evaluation of the petitioner dated January 22, 2005 and a letter dated September 7, 2006 purportedly written by [REDACTED] and
- A copy of a photograph of the petitioner showing a small mark at the base of his neck.

In his June 26, 2006 letter, the petitioner states that A-P- would yell and curse at him when he came home late from work, that she would not let him bring friends to their home and that he purchased a cellular telephone because A-P- would curse him when his friends called him at home. The petitioner describes one incident where A-P- was drunk and told him he should leave the apartment. When the petitioner did not leave, he states that A-P- choked him with both her hands on his neck. Yet the petitioner reports that after this incident, he was able to leave their home and returned in the early morning. On another unspecified occasion, the petitioner states that A-P- threatened to cut his throat and said that the police would believe her if she said she killed her husband for her safety. In August 2006, the petitioner states that A-P- left their apartment and did not return. On appeal, the petitioner reiterates that he was frightened when A-P- threatened to cut his throat because he is

Pakistani and she is an American citizen. He also reports “another severe misbehaviour [sic]” of A-P- in leaving him several times to live with her daughter.

The psychiatric evaluation contains grammatical and typographical errors and a search of public records does not indicate that [REDACTED] is associated with the “Brooklyn Multi Specialty Group” or the address for the group listed on the evaluation and letter purportedly written by [REDACTED]. Even if genuine, the evaluation is of little probative value. The evaluation is based on a single meeting with the petitioner of unspecified length. The evaluation diagnoses the petitioner with an unspecified “depressive illness and the domestic violence issue is the major contributing factor there of [sic].” The evaluation also includes details that the petitioner himself does not discuss in his statements: that A-P- threatened him with deportation, scratched him with her nails and demanded \$5,000 to accompany him to his adjustment of status interview.

The copied photograph shows a small mark at the base of the petitioner’s neck, but the picture bears no inscription and the petitioner provides no explanation of the picture in any of his statements submitted below or on appeal.

In sum, the relevant evidence fails to establish that A-P- subjected the petitioner to battery or extreme cruelty. Even if the petitioner demonstrated the requisite abuse, he has not established the validity of his marriage to A-P-. Accordingly, the petitioner has failed to establish that A-P- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen, was eligible for immediate relative classification based on such a relationship, entered into such a relationship in good faith, resided with the U.S. citizen during their qualifying relationship and was subjected to battery or extreme cruelty by the U.S. citizen during the qualifying relationship. The petitioner 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.