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By

[Redacted]

FILE: [Redacted]  
EAC 06 127 50760

Office: VERMONT SERVICE CENTER

Date: FEB 24 2009

IN RE: [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)

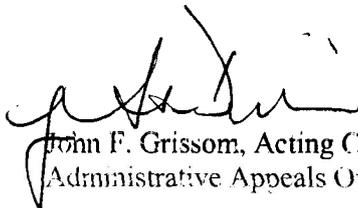
ON BEHALF OF PETITIONER:

[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.

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 service center director 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 on the basis of his determination that the petitioner had failed to establish: (1) that his wife subjected him to battery or extreme cruelty; (2) that he is a person of good moral character; and (3) that he entered into marriage with his wife in good faith.

Counsel submitted a timely appeal on April 23, 2007.

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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.

- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

- (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 explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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 file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .
- (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.
- (v) **Good moral character.** Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing

of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

- (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 of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Vietnam who entered the United States in B-2 visitor status on November 4, 2000. He married M-T-,<sup>1</sup> a 17-year-old United States citizen, on July 22, 2001. M-T- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on August 27, 2001. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date.

The petitioner and M-T- appeared at the Philadelphia District Office of the legacy Immigration and Naturalization Service (INS) for the petitioner's permanent residency interview on May 21, 2002. Questions regarding the bona fides of the petition arose, and M-T- told the INS officer that she and the petitioner had entered into a sham marriage for the purpose of procuring immigration benefits for the petitioner. In her written statement, M-T- stated the following:

I, [M-T-] voluntarily withdraw the *Form I-130, Petition for Alien Relative*, which was filed on August 27, 2001. I admit that the only reason I married [the petitioner] was so he could become a permanent resident of the United States. I never lived with him [italics in original].

\* \* \*

I never live with [the petitioner]. I married him so he can get his green card. I live [on] lawndale st in Philadelphia with my sister [name withheld] before that I lived in the city of Whitehall with my mom and dad & brother and sister. My mom & dad now live in

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

Michigan. [The petitioner] was suppose to come work in my parents nail salon. i know that lying to the immigration service is against the law but i wanted to help [the petitioner] and because he was a family friend. i never had sex with [the petitioner]. i am not buddhist the Reason why i got a buddhist wedding was to make the fraud more real. i file in 2001 income tax with [the petitioner] & claim [redacted] as my address. this was a lie. i never lived @ [redacted] i only files these taxes to make the marriage look more Real [sic].

In a separate statement, also issued on May 21, 2002, M-T- stated the following:

We got a bank account together, i had the access & he didn't. We also file income tax just to make this thing look more real we also took some pictures at the temple just to make the wedding look more real i'm not even buddhist. i only did all this to help him come to America we also got an apartment together but we don't even live together to prepare for this we just figure we should know the basic stuff a married couple would know, for example, like each other[']s] birthday, our address & little stuff like that. We didn't want him over here to help my family @ the salon we just did it to help friend over. if i knew it was going to be like this i wouldn't even do it. i mean, i only want to help them out but i Really don't want to get into trouble or anything. no one really help us. i just wish this was a lot easier and had never happen. i wish i never did this that way i would [not] be in here writing this thing & be at home with my boyfriend instead. but i guess i failed what i was suppose to do today. i hope i never have to hear about this anymore as soon as i get outta here. i wish i [had] never agreed to all this. but it did feel good to help someone out while it lasted. i just wish this thing would end soon though. And no one made me do it, i just wanted to help them out that's all. i guess i really can't. We only got all those stuff to make it look more realistic. i don't really want to marrie him. i don't even like him like that. At least in that kinda way. i only like him as a friend. i hardly even knew the guy. just little stuff. At least the things i should know [sic].

Accordingly, the district director denied the Form I-130 on May 21, 2002. A Form I-862, Notice to Appear, was issued to the petitioner on May 21, 2002. A Form I-200, Warrant for Arrest of Alien, was also issued on May 21, 2002. The petitioner was taken into custody, and was detained while proceedings were initiated at the immigration court in York, Pennsylvania.

On May 23, 2002, a hearing was scheduled for May 28, 2002 in York. On May 28, 2002, the hearing was rescheduled for June 26, 2002. On June 3, 2002, former counsel filed a motion for an expedited custody redetermination and bond hearing. Previous counsel's motion was granted, and on that day a custody redetermination hearing was scheduled for June 12, 2002, in York. On June 11, 2002, M-T- submitted an affidavit. M-T- stated that she and the petitioner had a bona fide marriage, which was blessed by her family. M-T- stated that "I am a quiet and naive girl, and is [sic] not sophisticated." She stated that she is "shy and live a rather sheltered life." She stated that "my memories are often not too good"; that "I usually do not even remember personal things about myself"; and that "Being very

shy. I usually cannot look at anyone straight in the eye and maintain stable eye contact while holding a conversation.” M-T- stated that the INS officer who interviewed her on May 21, 2002 “constantly yelled and verbally assaulted” her; that he threatened to place her in jail; that he read to her, verbatim, the words to write in her statement; that she worried for her safety and freedom; that she did not wish to withdraw the Form I-130, but had no choice but to do so; and that “as a young and naïve girl,” she “had no recourse but to sign”; and that he told her that she would not be released unless she wrote, word for word, what he told her to write. As such, M-T- stated, the INS officer “obviously had a hidden agenda from the get go.”

At the June 12, 2002 hearing, the petitioner was released on a \$10,000 bond. On June 26, 2002, the immigration judge granted previous counsel’s request to change the venue of the petitioner’s immigration proceedings from York, Pennsylvania to Philadelphia, Pennsylvania. On November 21, 2002, the petitioner was scheduled for a master calendar hearing on April 3, 2003 at the immigration court in Philadelphia. The hearing was rescheduled several times until finally being administratively closed on October 27, 2004 on the basis of the petitioner’s then-pending Form I-360.

In the meantime M-T- had filed a new Form I-130 on behalf of the petitioner on October 31, 2002. The petitioner filed a new Form I-485 that same day. The couple appeared for a second permanent residency interview on September 23, 2003. As had happened at the first interview, questions arose during the interview with regard to the bona fides of the marriage. M-T- again withdrew her support of the petition. In her September 23, 2003 statement, M-T- withdrew her support of the petition, apologized for “getting involved with this,” and stated that she was “only trying to help out a friend.” In her September 30, 2003 decision acknowledging M-T-’s withdrawal of the Form I-130, which was mailed to M-T-’s address in Michigan, the district director stated that, during the September 23, 2003 interview, which was recorded, M-T- admitted that the statements in her June 11, 2002 affidavit with regard to the INS officer who had interviewed her in 2002 were not true; that she had not been forced to stay in the office as alleged in her affidavit; and that she had written one of her statements while alone in a room. The district director noted that several discrepancies had arisen between the testimony of M-T- and the petitioner; that when previous counsel had become aware of the discrepancies he withdrew his representation of M-T- and the petitioner; and that, when confronted with the discrepancies, the petitioner and M-T- were unable to resolve those discrepancies. The district director then made a determination that M-T- and the petitioner had entered into marriage for the sole purpose of obtaining immigration benefits for the petitioner.

The petitioner filed a Form I-360 on May 29, 2004,<sup>2</sup> and alleged that he had been subjected to battery and/or extreme cruelty by M-T-. The director issued a request for additional evidence on June 9, 2004, and a notice of intent to deny the petition (NOID) on January 26, 2005. On May 2, 2005, the director denied the petition, finding that the petitioner had failed to establish that he was subjected to battery and/or extreme cruelty by M-T-; and that he had entered into marriage with M-T- in good faith. The AAO summarily dismissed the petitioner’s appeal of the director’s denial on December 21, 2005, on

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<sup>2</sup> See EAC 04 182 52116, filed May 29, 2004, and denied May 2, 2005.

the basis of the petitioner's failure to specifically identify any erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal.

The petitioner filed the instant Form I-360 on March 22, 2006. On August 23, 2006, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner was subjected to battery and/or extreme cruelty by M-T-; that he is a person of good moral character; and that he married M-T- in good faith. On October 18, 2006, counsel requested additional time in which to respond to the NOID. The director issued a second NOID, for the same reasons as set forth in the original NOID, on December 5, 2006. Counsel responded to the NOID on January 11, 2007, and submitted additional evidence.

After considering the evidence of record, the director denied the petition on March 21, 2007. On appeal, counsel submits a brief. Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition.

### **Battery and/or Extreme Cruelty**

The first issue on appeal is whether the petitioner has established that M-T- subjected him to battery and/or extreme cruelty. Upon review, the AAO agrees with the director's determination that the petitioner has failed to make such a demonstration.

The record contains two affidavits from the petitioner. In his first affidavit, which was submitted to USCIS on April 11, 2005 in support of the first Form I-360, the petitioner stated, with regard to battery and/or extreme cruelty, that after the marriage, M-T-'s personality underwent a sudden change. According to the petitioner, M-T- would create arguments for "any trivial things"; that M-T- blamed him for not fulfilling her needs; that M-T- told him he was "just a bump"; that although he tried to console M-T-, and tell her that things would one day be better, M-T- did not seem to understand him, and continued giving him a very hard time; that he found out M-T- had an extramarital affair with another man; that, when he confronted M-T- about the affair she became angry, told the petitioner that she would not help him with his green card, and told the petitioner that if he did not stop complaining about the affair she would leave him. The petitioner stated that he and M-T- became "involved into more quarrels since then," which culminated in M-T-'s refusal on May 21, 2002 to continue sponsorship of his permanent residency petition. The petitioner stated that he was placed into INS detention as a result of M-T-'s refusal to continue sponsorship of his permanent residency petition, and that he became depressed. He stated that M-T-'s parents were upset and disappointed over their daughter's behavior, and tried to reconcile M-T- and the petitioner. According to the petitioner, after he was released from INS detention M-T- admitted her wrongdoing and asked for his forgiveness, which he gave. However, the petitioner stated that after only a few days, M-T- "resumed doing exactly the same things she did to me previously." The petitioner stated that, "[d]ay in and day out, she created many troubles in our relationship," and that M-T- resumed seeing the man with whom she had had the affair. The petitioner stated that "[a]s I tried not to give way to her wrongdoings, she became more infuriated; and as result, she again refused to sign for me at the second interview for my green card."

In his January 5, 2007 affidavit, the petitioner states that he was subjected to verbal and mental abuse by M-T-. The petitioner stated that M-T- “threatened and mistreated” him; that M-T- would demand that she give him all the money he earned; that M-T- cheated on him and did not care if he found out; that M-T- did not consider his feelings and would degrade him in any way that she could; that he was socially isolated from all the people around him; that M-T- was very possessive and did not want the petitioner to have any friends or social life outside their home; and that he has been seeing a doctor for over a year, as he needs psychological help because “all I do is think about and stress about the mistreatment that I suffered with my ex-wife.”

In his March 9, 2004 letter, [REDACTED], a psychologist at the Hamilton-Madison House in New York, states that the petitioner was diagnosed with major depressive disorder, single episode, severe. He states that the petitioner “has reportedly been suffering depressive symptoms due to the relationship breakup with his wife.” In his March 2, 2005 letter, [REDACTED] states that the petitioner’s condition had improved, and that treatment ended on January 3, 2005.

In his March 21, 2007 denial, the director found the petitioner’s evidence insufficient to establish that he was subjected to battery and/or extreme cruelty. The director disregarded [REDACTED] letters, as the petitioner had failed to submit, as requested by the director, any evidence to establish that the petitioner’s psychological state was directly caused by behavior of M-T- that could be considered extreme cruelty. With regard to the petitioner’s affidavits, the director stated that his affidavits failed to provide any examples of abuse. The director noted further that the petitioner had failed to address the fact that, for the majority of the marital relationship, M-T- was attending school in Michigan while the petitioner was living in Pennsylvania or New Jersey. As noted by the director, “[i]t appears that her absence would have a significant impact, at the very least, on her ability to verbally abuse you and force you not to leave the house.” The director found that the petitioner’s omission of M-T-’s residence in Michigan called into question the credibility of the petitioner’s claim. The director found that the petitioner had failed to establish that M-T- held a position of power in the marriage which she used to intimidate or coerce the petitioner.

In her May 14, 2007 appellate brief, counsel contends that the petitioner’s affidavits of record make clear that M-T- acted purposefully, in an attempt to control him through psychological attacks and economic coercion, which included emotional abuse, humiliation, degradation, and isolation. Counsel also stated that the letters from [REDACTED] indicate that the petitioner’s depression was caused by the actions of M-T-.

The AAO finds counsel’s arguments unpersuasive. As a preliminary matter, the AAO notes that counsel does not address on appeal the director’s statements with regard to M-T-’s residence in Michigan while the alleged abuse was occurring. Counsel was informed by the director that the petitioner’s omission of this factor in his affidavits called the credibility of his claim into question, yet counsel has elected not to address the matter on appeal. The AAO agrees with the director’s finding that M-T-’s residence in Michigan would appear to have a significant impact on her ability to abuse the petitioner, and control his behavior, in Pennsylvania or New Jersey, thus undermining

the credibility of his petition. Counsel's only statement regarding this issue was her statement on the Form I-290B that "the schooling of spouse is not relevant b/c her schooling was not her residence where the abuse took place." Counsel's statement is insufficient and does not address the issue at hand. The time that M-T- spent in Michigan attending school was time not spent in Pennsylvania or New Jersey with the petitioner. The record fails to establish how M-T- was abusing the petitioner or controlling his behavior while she was living in Michigan.

Further, the AAO notes that counsel has failed to address the director's finding that the petitioner had failed to submit additional evidence from [REDACTED] to indicate that the petitioner's depression was directly linked to the treatment he received from M-T-. Rather, counsel simply stated that [REDACTED]

letters indicate that M-T-'s abuse of the petitioner was the cause of his depression. The AAO disagrees. [REDACTED] does not state that it was M-T-'s treatment of the petitioner that caused his depression. Rather, he stated in his March 9, 2004 letter that the petitioner "has *reportedly* been suffering depressive symptoms due to the relationship breakup with his wife [emphasis added]." In his March 2, 2005 letter, [REDACTED] stated that the petitioner had "*reportedly* experienced depression due to the problems in the relationship with his wife [emphasis added]." Stating that the petitioner's depression was reportedly caused by M-T-'s behavior is not synonymous with a finding by [REDACTED] that such behavior was in fact the cause of the depression. The record fails to establish that the petitioner's depression was caused by the treatment he received from M-T-.

Further, the AAO notes that the petitioner's affidavits differ from one another. For example, in his 2007 affidavit the petitioner alleged that M-T- demanded money from him; isolated him; and was possessive. Such allegations were not made in his 2005 affidavit. Such inconsistencies detract from the credibility of the petitioner's claim. 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. *Id.*

On appeal, counsel raises [REDACTED] *v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> Cir. 2004). However, counsel's citation to [REDACTED] is not persuasive. The actions and incidents described in the affidavits of record fail to meet the standard described in the [REDACTED]. In [REDACTED], the petitioner had been violently physically assaulted by her spouse on several occasions. After two assaults, which took place while [REDACTED] resided with her spouse in Mexico, [REDACTED] fled to the United States fearing that her spouse would be able to find her in Mexico. After a time, the petitioner's spouse obtained [REDACTED] phone number in the United States and persuaded her to let him visit her in the United States. Once in the United States, [REDACTED]'s spouse convinced [REDACTED] of his remorse and agreed to marriage counseling. The two returned to Mexico where, after a brief period, [REDACTED] was again brutally attacked by her spouse. After receiving medical treatment for her injuries, the petitioner returned to the United States. The petitioner was placed in proceedings and sought suspension of deportation. The immigration judge denied [REDACTED]'s suspension request finding that her testimony lacked credibility and that she failed to prove that she was a victim of

domestic violence. On appeal to the BIA, the BIA reversed the IJ's adverse credibility determination but concluded that because the physical violence occurred in Mexico, [REDACTED] was unable to show that she had been battered by or subjected to extreme cruelty in the United States.<sup>3</sup> In reviewing the BIA's decision, the Ninth Circuit found there was no dispute that the abuse suffered by the petitioner in Mexico would qualify as battery or extreme cruelty. The sole question considered by that Court was whether [REDACTED]'s spouse's actions "in seeking to convince [her] to leave her safe haven in the United States in which she had taken refuge can be deemed to constitute extreme cruelty." *Id.* at 836. In determining that the petitioner had been subjected to extreme cruelty, the court found that the "interaction between [REDACTED] and her spouse in Los Angeles made up an integral stage in the cycle of domestic violence, and thus the actions taken by [REDACTED] spouse in order to lure [REDACTED] back to the violent relationship constitute extreme cruelty." *Id.*

These facts are not applicable to the instant case in which the petitioner has not shown that there was any cycle of domestic violence. The Ninth Circuit recognized that the interaction that took place between [REDACTED] and her spouse in the United States was during "a well-recognized stage within the cycle of violence," known as the "contrite" phase, which is both "psychologically and practically crucial to maintaining the batterer's control." *Id.* at 828.

In this case, the evidence of record fails to demonstrate that the petitioner was forced to submit to the control of M-T-. As will be discussed further later in this decision, there are questions as to whether the petitioner and M-T- ever in fact lived together, which would severely lessen her ability to control the petitioner's actions. Further, it is uncontroverted that the petitioner was attending school in Michigan, while the petitioner lived in Pennsylvania or New Jersey, which would further reduce her ability to control his behavior. Nor does the evidence of record demonstrate that her actions amounted to extreme cruelty. As noted by the court in [REDACTED] because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship [rises] to the level of domestic violence . . . ." Again, such acts 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.

On appeal, counsel also states that "[w]ith all evidence in cases involving battery and/or extreme cruelty to a spouse, the 'any credible evidence' standard is applied to all elements of the petitions [sic]." Section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of" USCIS.

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<sup>3</sup> Although the current law does not contain the requirement that the abuse have occurred in the United States, the law applicable at the time of [REDACTED]'s petition did include this requirement.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

In a case such as this, where there is little or no physical evidence of battery and/or extreme cruelty, the petitioner's testimony is crucial. His testimony, however, contains unresolved discrepancies that detract from the credibility of his claim. Moreover, his testimony is very general in nature. For example, the petitioner states that he was socially isolated, but fails to elaborate. Further, statements such as "she often created arguments and fights"; "she continued giving me a very hard time in our relationship"; and "we have often been involved in more quarrels since then" are, without specific example, insufficiently vague. The petitioner has failed to establish that M-T- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### **Good Moral Character**

The director also found that the petitioner had failed to establish that he is a person of good moral character. The AAO agrees.

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in March 2003 and ending in March 2006).

The record contains two police clearances issued in July 2004, but there are no clearances to cover the period July 2004 through March 2006. The petitioner was placed on notice of this deficiency both in the director's NOID and his denial. Although the petitioner submits a letter on appeal stating that he is a man of good moral character, no local police clearance was submitted. While the petitioner does state that his local police station refused to issue a police clearance, he does not indicate why such refusal took place. Nor does he indicate why he could not obtain a state-issued criminal background check in lieu of the local police clearance.

The AAO is without authority to waive the regulatory requirements set forth at 8 C.F.R. § 204.2(c)(2)(v). Without the requisite police clearances, or state-issued criminal background checks, the petitioner is unable to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

### **Good Faith Entry into Marriage**

The director also found that the petitioner had failed to establish that he married M-T- in good faith. The AAO agrees. M-T- twice testified to immigration authorities that the marriage was conducted for the sole purpose of obtaining immigration benefits for the petitioner, and the district director made a finding in his September 30, 2003 denial of the Form I-130 that the marriage was conducted for the sole purpose of obtaining immigration benefits for the petitioner.

In support of his contention that he entered into marriage with M-T- in good faith, the petitioner submitted photographs of the couple; bank statements; and utility bills. The director noted in his denial that although the bank statements cover the period from December 2002 through August 2003, there was very little account activity; the majority of transactions were monthly maintenance fees debited by the bank. With regard to the utility bills, the director noted that they had already been considered in the petitioner's first Form I-360 and were deemed insufficient at that time. With regard to the photographs, the director stated that photographs were insufficient to establish good faith entry into marriage.

On appeal, counsel contends that the petitioner's inability to gather additional documentation is understandable, given the nature of the couple's marriage.

The petitioner has failed to establish that he entered into marriage with M-T- in good faith. The record contains little information regarding the circumstances surrounding the petitioner and M-T-'s first meeting; their first impressions of each other; their courtship; their decision to marry; or the types of activities they enjoyed together. Further, M-T-'s two separate admissions to immigration officers that the marriage was arranged for the sole purpose of obtaining permanent residency for the interview undermines the credibility of his assertion that he married M-T- in good faith. The record lacks sufficient documentation to establish that the petitioner entered into marriage with M-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Accordingly, the petitioner had failed to establish: (1) that his wife subjected him to battery or extreme cruelty; (2) that he is a person of good moral character; and (3) that he entered into marriage with his wife in good faith. As such, the AAO finds that the director properly denied this petition.

Beyond the decision of the director, the AAO finds that the immigrant petition should be denied for three additional reasons: (1) the petitioner has failed to demonstrate that he and M-T- shared a joint residence; (2) section 204(c) of the Act bars approval of the petition; and (3) the record does not establish that the petitioner had a qualifying relationship with a United States citizen.

### Joint Residence

The AAO incorporates here M-T's statements to immigration officers, which are part of the record, that she and the petitioner never lived together. Further, the AAO notes that the record contains conflicting information with regard to where the petitioner has lived. For example, on the Form G-325A that he submitted with his second Form I-485 on October 31, 2002, the petitioner stated that he lived at [REDACTED] in Philadelphia between July 2001 and March 2002; that he lived at [REDACTED] in Philadelphia between March 2002 and July 2002; and at [REDACTED] in Philadelphia between July 2002 and October 2002. However, on the Form G-325A that he signed on May 21, 2004, the petitioner does not report having ever lived at the [REDACTED] residence. Rather, he stated that he had lived at [REDACTED] from July 2001 until 2003; and that he lived at [REDACTED] in Carteret, New Jersey from 2003 until May 2004. But, in an affidavit he signed on June 26, 2004, the petitioner attested that he had lived at the [REDACTED] residence from July 2001 through June 2004. He did not report having ever lived at either [REDACTED] or [REDACTED]. On the Form G-325A that he signed on March 17, 2006, the petitioner does not report having ever lived at the [REDACTED] he states that he lived at [REDACTED] from July 2001 until 2003, and that he then lived at the [REDACTED] address from April 2003 until December 2004. However, in his 2005 affidavit, the petitioner stated that he did not move into the [REDACTED] residence until after M-T had "refused to sign" for him at their September 30, 2003 permanent residency interview, and, in a June 26, 2004 affidavit, [REDACTED] states that he owns the house located at [REDACTED], and that the petitioner began living at that address in October 2003. 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, and, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record is insufficient to demonstrate the petitioner's residence throughout the marriage. Further, the AAO notes that the district director mailed his September 30, 2003 decision denying the Form I-130, which was denied on the basis of M-T's second declaration that she had married the petitioner for the sole purpose of obtaining immigration benefits on his behalf, to M-T's address in Michigan, which she had provided to the interviewing officer at the petitioner's permanent residency interview. The petitioner has not established by a preponderance of the evidence that he shared a joint residence with M-T, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. For this additional reason, the petition may not be approved.

### Section 204(c) of the Act

Beyond the decision of the director, the AAO finds that section 204(c) of the Act further bars approval of this petition. Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part, the following:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws[.]

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states the following:

*Fraudulent marriage prohibition.* Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975).

As noted previously, the district director determined in his September 30, 2003 denial of the Form I-130 that the petitioner entered into marriage with M-T- for the sole purpose of obtaining permanent residency. In both her May 21, 2002 and September 23, 2003 statements, M-T- admitted that she married the petitioner for the sole purpose of gaining immigration benefits for the petitioner. The petitioner has submitted no convincing testimony or evidence in either of the Form I-360 filings that such was not the case. The record here is clear that the petitioner married M-T- for the primary purpose of evading the immigration laws.

An independent review of the record establishes that the petitioner married M-T- for the purpose of evading the immigration laws. Section 204(c) of the Act bars the approval of this petition. For this additional reason, the petition may not be approved.

### **Qualifying Relationship and Eligibility for Classification as an Immediate Relative**

In his January 5, 2007 affidavit, the petitioner refers to M-T- as "my ex-wife." The record, however, contains no evidence regarding the couple's divorce. As such, the petitioner has failed to establish whether he was still married to M-T- at the time the petition was filed. Section 204(a)(1)(A)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a citizen of the United States is eligible to self-petition under these provisions if he or she is an alien:

- (CC) who was a bona fide spouse of a United States citizen within the past 2 years and –
  - (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence . . . .
  - (bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or
  - (ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. . . .

As set forth previously, the petitioner has failed to demonstrate that he suffered battery and/or extreme cruelty by M-T-. Therefore, he has also failed to demonstrate a connection between the termination of the marriage and any battery or extreme cruelty to which he was subjected by M-T-. If the petitioner was divorced from M-T- at the time the petition was filed, the record then fails to establish that he had a qualifying relationship with a United States citizen on the date the petition was filed, as it fails to demonstrate a connection between the termination of the marriage and any battery or extreme cruelty he was subjected to by M-T-. The petitioner has failed to establish a qualifying relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. He is, therefore, ineligible for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act. For this additional reason, the petition may not be approved.

### **Conclusion**

The AAO agrees with the director's determination that the petitioner has failed to establish that his wife subjected him to battery or extreme cruelty; that he is a person of good moral character; and that he entered into marriage with his wife in good faith. Beyond the decision of the director, the AAO finds that the petitioner has failed to establish that he shared a joint residence with his wife; that he had a qualifying relationship with a citizen of the United States on the date the petition was

filed; or that he is eligible for classification as an immediate relative. The AAO also finds that section 204(c) of the Act bars approval of this petition. Accordingly, based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. For all of these reasons, the AAO will not disturb the director's denial of the petition.

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).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 appeal is dismissed.