U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

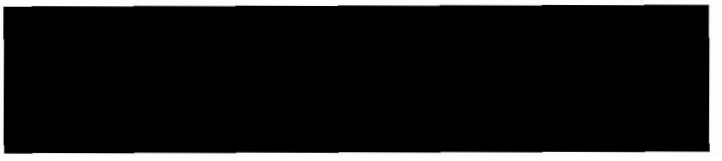
FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 27 2009

EAC 04 220 52574

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:



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 Acting Director (Director), Vermont Service Center, denied the immigrant visa petition on January 24, 2006. On March 14, 2007, the Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. On August 30, 2007, the petitioner filed suit against the Department of Homeland Security in the District Court, Eastern District of New York. *Issiaka A. Amoussa v. Paul Novak et al.*, cv-07-3669 (E.D.N.Y. 2007). Pursuant to the February 19, 2008 court order and the stipulated agreement to dismiss, the AAO reopened the case on motion pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii) and provided the petitioner with notice of additional derogatory information pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i). Based upon a *de novo* review of the matter, the AAO will uphold the denial of the petition.

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien subjected to battery or extreme cruelty by his United States citizen spouse. The director determined that the petitioner failed to establish that he is a person of good moral character. In its first decision, dated March 14, 2007, the AAO affirmed the director's finding that the petitioner failed to establish his good moral character and dismissed the petitioner's appeal.

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).

On May 12, 2008, the AAO reopened this proceeding on its own motion, conducted a *de novo* review, and issued notice to the petitioner of all deficiencies. In addition to the ground for denial previously cited to in the March 14, 2007 decision, the AAO also determined that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen spouse during his marriage. In its notice, the AAO provided the petitioner a period of 60 days in which to supplement the record. The petitioner responded to the AAO's notice on July 10, 2008, September 22, 2008, and again on September 23, 2008. However, as will be discussed, the petitioner has failed to establish his eligibility for classification under section 204(a)(1)(A)(iii) of the Act.

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:

> (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.

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.
>
> * * *
>
> (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.

Section 101(f) of the Act states, in pertinent part:

> No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

* * *

> (3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraphs (A) and (B) of section 1182(a)(2) of this title [section 212(a)(2) of the Act] . . . if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period . . . .

Section 212(a)(2)(A) of the Act includes, "any alien convicted of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime."

In her January 24, 2006 decision, the director found that the petitioner's 1991 conviction under 42 U.S.C. § 408(g)(2), "Fraudulent Use of a Social Security Number," in the U.S. District Court for the Eastern District of New York was a conviction of a crime involving moral turpitude. The petitioner did not dispute this finding on appeal. Rather, counsel argued "there is no reason the [Director] should consider conduct preceding the three-year statutory period." Counsel, therefore, concluded without any discussion of the crime involving moral turpitude, that because the petitioner's conviction took place more than three years prior to the filing of his petition, the petitioner had adequately established his good moral character. In its March 14, 2007 decision, the AAO provided an in-depth analysis regarding the petitioner's conviction and relevant case law and ultimately concurred with the director's determination that the petitioner was convicted of a crime involving moral turpitude. That decision is hereby incorporated by reference. In the AAO's notice of reopening and derogatory information, which is also incorporated by reference, the AAO again noted the petitioner's conviction for a crime involving moral turpitude as a specific factor that precluded a finding of the petitioner's good moral character. In the petitioner's July 10, 2008, September 22, 2008, and September 23, 2008 responses, neither counsel nor the petitioner addressed the AAO's findings regarding the petitioner's conviction of a crime involving moral turpitude. As the petitioner has failed to challenge the finding that he was convicted of a crime involving moral turpitude, we affirm our previous determination on this issue.

In addition, we affirm our previous finding regarding the petitioner's failure to meet the exceptions at sections 212(a)(2)(A)(ii)(I) and (II) of the Act, 8 U.S.C. §§ 1182(a)(2)(A)(ii)(I) and (II) and the discretionary provisions of section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). The petitioner's conviction precludes a finding of the petitioner's good moral character pursuant to section 101(f)(3) of the Act as he is an alien described in section 212(a)(2)(A)(i)(I) of the Act, as an alien convicted of "a crime involving moral turpitude."

We further reiterate that the statute does not state a time period during which the self-petitioner must demonstrate his or her good moral character. *See* section 204(a)(1)(A)(iii)(II)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). Furthermore, while the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires evidence of the petitioner's good moral character during the three years preceding the filing of the petition, the regulation does not limit the temporal scope of USCIS' inquiry into the petitioner's good moral character. The agency may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996).

In the AAO's May 12, 2008 notice, the petitioner was informed of derogatory evidence in the record, to

include his 1991 crime involving moral turpitude (CIMT) conviction, his 1996 arrest, and a 1996 Drug Enforcement Agency report. The petitioner was afforded the opportunity to submit further evidence to clarify adverse information, to explain discrepancies, and to provide any other evidence relevant to show his good moral character. Among other things, the petitioner was asked to provide: information regarding his 1991 conviction and subsequent probation; information regarding his 1996 arrest in Florida; information regarding his identity and an explanation for the use of names other than his own, including on his asylum application; information regarding his employment, both authorized and unauthorized; and any other information and evidence relevant to his claim of good moral character. The petitioner's response is summarized as follows:

Whether the Petitioner Satisfactorily Completed Probation for his 1991 CIMT Conviction

In his July 10, 2008 affidavit the petitioner claims that he was "told verbally" that his probationary period was over but provides no documentary evidence which demonstrates his successful completion of his probation. 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)). Accordingly, the petitioner has failed to establish that he satisfactorily completed probation for his CIMT conviction.

The Petitioner's 1996 Arrest

The petitioner maintains that he was "just [an] innocent victim who unknowingly happened to be [in a] house which turned out to be the place of criminal conduct and conspiracy." The petitioner further claims that the case against him was dismissed prior to the trial. The record contains evidence that the charges filed against the petitioner were dismissed.

Drug Enforcement Agency (DEA) Report Indicating Petitioner's Admission of Use of a False "INS card"

The petitioner claims that at the time of his arrest in 1996, he was issued an employment authorization document (EAD) based upon the filing of his Form I-589, Request for Asylum. The petitioner then states that he disagrees with the DEA report and contends that he did not admit to the DEA agent that he was in possession of a fraudulent INS Card. The petitioner does not offer any explanation for why the agent noted that at the time of the petitioner's arrest, the petitioner was in possession of two "INS cards," one of which was "false." We note that although the petitioner refutes that he made an oral admission about the cards, he does not challenge the claim in the report that he was in possession of two cards, one of which was not legitimate.

The Petitioner's Previous Asylum Application

The petitioner claims that his asylum application was filed by an unnamed "broker" who was "very

persuasive in telling [the petitioner] that [he] was qualified for asylum . . . ." The petitioner states that he gave the unnamed broker his biographic information but contends that the broker wrote the incorrect information on the form and "made [the petitioner] sign the I-589 signature page without [the petitioner] seeing or knowing the content of the application, including its fraudulent claim." The petitioner's explanation is not a persuasive excuse. The petitioner signed the Form I-589 on November 23, 1992, under penalty of perjury. The regulation at 8 C.F.R. § 103.2(a)(2) provides that "[b]y signing the application or petition, the applicant or petitioner...certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct." The actual signature portion of the Form I-589 at part E requires the applicant to make the following affirmation: "Under penalty of perjury, I declare that the above and all accompanying documents are true and correct to the best of my knowledge and belief." On that basis alone, the petitioner must be held responsible for the contents of his application.

Regardless, if, as the petitioner claims, he was unaware of the information contained on the application, his failure to apprise himself of this information constitutes deliberate avoidance and does not absolve him of responsibility for the content of his petition or the materials submitted in support. *See Hanna v. Gonzales,* 128 Fed. Appx. 478, 480 (6th Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises,* 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente,* 982 F.2d 156, 159 (5th Cir. 1993). To find otherwise would have serious negative consequences for USCIS and the administration of the nation's immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, like the petitioner, these aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution by claiming no knowledge of the contents of the application or petition.

Other names used

The petitioner claims that his correct name is . He states that the name was erroneously used by the unnamed broker who allegedly prepared his asylum application and, therefore, also appeared on the EAD subsequently issued to him based on the filing of the asylum application. The petitioner further claims that the name was "created or picked up" by the Secret Service from his illegible signature. The petitioner generally acknowledges the use of the name from November 1990 to January 1991 and states that he worked without authorization from November 1990 to January 1991 under the name However, despite the AAO's request for a "detailed explanation of the purposes" of the petitioner's use of his aliases, the petitioner provides no further discussion regarding where he obtained the name or why he used it and does not indicate whether he used other documents such as a social security number or

EAD card in this name in order to obtain his employment.

Taxes

As it relates to his employment and the filing of his taxes, in his July 10, 2008 notarized affidavit, the petitioner stated, "under oath . . . [and] under the penalty of perjury" that he worked with a valid EAD as a caregiver in New York from 1993 until 1996. The petitioner further stated that he worked as a clerk for Washington Inventory from 1997 to 1998 and for Western Inventory from 1997 to 2000. The petitioner additionally stated that he "always . . . paid taxes whenever [he] worked" and specifically indicated that he paid taxes from 1994 to 1996 and from 1998 to 2000. While the petitioner submitted no documentary evidence to support the claim that he "always . . . paid taxes," in counsel's response to the AAO's notice, counsel requested that the petitioner be afforded additional time to submit his tax transcripts.

The AAO granted the petitioner's request for additional time in a letter dated July 24, 2008 and stated:

> As your July 10, 2008 affidavit states that you paid taxes in 1994, 1995, 1996, 1998, 1999, and 2000, please provide original IRS certified copies of tax returns for these specific years and IRS certified transcripts of your filings. As you also indicate that you worked in 1993 and 1997 but did not file taxes for those years, we request that you provide an explanation as to why you failed to file taxes for those periods. In addition, we note that if your transcripts indicate that you have amended any returns, we request IRS certified copies of your amended returns.

In response to the AAO's request to substantiate the claims made by the petitioner in his July 10, 2008 affidavit regarding the filing of his taxes, in his September 22, 2008 affidavit, which was also made by the petitioner while under oath and "under the penalty of perjury," the petitioner indicates that he "would like to rectify some parts of [his] previously submitted affidavit." The petitioner then admits that he did not, in fact, file taxes in 1994, 1995 and 1996, a claim he previously swore to be true, because he was in school during that time. The petitioner submits a letter from his friend [redacted] as confirmation that he did not work during this time, as well as evidence that he was enrolled in GED and Practical Nursing Programs from 1993 to 1994, and that he received his state certification as a residential health care facility nurse aide in 1995. The petitioner does not provide any explanation for why he swore in his July 10, 2008 affidavit to have "worked as a caregiver for Independent Living, a healthcare agency in downtown Manhattan, from 1993 until 1996 with a valid employment authorization card," and that he "filed IRS Individual Taxes from 1994 – 1996," and his current claim (again, under penalty of perjury) that he did not work during that time because he was a student. In addition, the petitioner fails to provide any discussion regarding his failure to file taxes in 1993 and 1997 as requested in the AAO's July 24, 2008 letter. Moreover, the petitioner failed to provide any evidence to support his claim that he filed taxes in 1998 and 1999. Although counsel claimed in his July 10, 2008 letter that the petitioner "has ordered IRS tax transcripts for all years in which he has filed his tax returns" and stated in his September 22, 2008 cover letter that he had enclosed the petitioner's

1998 and 1999 tax transcripts and his 1999 W-2 form, no further evidence regarding these tax years was submitted. While the AAO received a second submission on September 24, 2008 in which counsel indicated that he had "inadvertently omitted" evidence, the petitioner's tax documentation regarding these years was not included in this second submission either. While we acknowledge the evidence from the petitioner's tax preparer that indicates the petitioner was not required to file taxes from 2000-2002, no further evidence was submitted regarding his 1998 and 1999 returns and transcripts. It must be noted that the AAO specifically requested this evidence in order to make a full and complete assessment of the petitioner's claim to have established his good moral character. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Based solely on the petitioner's failure to respond to this request for evidence (RFE), the petition could not be approved.

Reviewing the evidence in the light most favorable to the petitioner, we find the record is, at best, ambiguous as it relates to the petitioner's knowledge of the false information contained on his asylum application and, more importantly, his true identity. The petitioner claims that he was unaware of the information that was contained on the asylum application as he was made to sign the document prior to its completion by an unnamed agent. The petitioner attempts to disclaim any responsibility for the false information contained in his asylum application and continues to assert with the current petition that he is a citizen of Benin, born to parents who were also born in Benin, rather than Nigeria as indicated on the asylum application. The petitioner offers no further testimony regarding his good moral character and behavior in the years subsequent to his conviction, such as involvement in community service organizations or other charitable works, except to state that he has "not been arrested nor . . . engaged in any unlawful conduct . . . ." Although the petitioner submits a single letter from [redacted] who claims to have met the petitioner in 1997 when the petitioner worked with his daughter at the American Inventory Company, [redacted] does not indicate his knowledge of the petitioner's criminal history but describes the petitioner as "humble," "dedicated," "methodical," and "trustworthy." It is noted that contrary to [redacted] claim regarding how he met the petitioner, the petitioner has never indicated employment at the American Inventory Company. The petitioner submits no other letters from responsible people capable of knowledgeably attesting to his character pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v).

In sum, we find that the petitioner has not established his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act, for two reasons. First, it is undisputed that the petitioner has been convicted of a crime involving moral turpitude and that he does not meet the exceptions at sections 212(a)(2)(A)(ii)(I) and (II) of the Act. Therefore, section 101(f)(3) of the Act precludes a finding of the petitioner's good moral character. Second, the evidence in the record demonstrates a continued lack of credibility, honesty, reliability, and trustworthiness on the part of the petitioner since his arrest and conviction in 1991 which continues to the present day and adversely reflects on his good moral character.

As discussed above, in addition to his two arrests and his conviction, the petitioner has a prolonged

history of dishonesty, non-compliance and demonstrated disregard for the laws of the United States, which continues to the present. Although the petitioner claims in his July 10, 2008 affidavit that he has not "been arrested nor . . . engaged in any unlawful conduct since [his] 1996 arrest," the petitioner has failed to sufficiently demonstrate a reform of character and good moral character from the date of his conviction in 1991 to the present. To the contrary, the record shows a continued pattern of prevarication and contravention of the laws *after* that date. Specifically, the petitioner has failed to submit documentation which demonstrates his satisfactory completion of his probation following his conviction. His vague statements regarding what he was told by his probation officer are not sufficient to document the successful completion of his probation. As previously stated, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While the petitioner has also failed to demonstrate the proper filing of his taxes, what is equally disconcerting are the petitioner's continually changing claims regarding his employment and the filing of his tax returns. In his July 10, 2008 affidavit, the petitioner initially stated that he filed taxes during all periods in which he was employed. However, when required to present documentary proof of his claim, the petitioner then retracted his statement. To date, the petitioner has submitted equivocal documentation regarding the proper filing of his taxes as initially claimed from 1994 through 1996, no evidence of his 1998 and 1999 returns or transcripts and no explanation for his failure to file taxes in 1993 and 1997. That the petitioner's claims, all of which were made under penalty of perjury, appear to change based upon what he can substantiate is of great concern and demonstrates that even up to the present day, the petitioner's testimony is neither forthcoming nor reliable. The petitioner has also admitted to using a name other than his own in order to work without authorization and, in addition, the record contains an official statement from a DEA agent regarding the petitioner's possession of a fake employment authorization document, which the petitioner has not refuted.

Finally, the record reflects that the petitioner knowingly presented and subscribed as true, false statements such as his nationality, his date of birth, and his date of entry into the United States, all of which were material to his asylum application, thereby violating 18 U.S.C. § 1546(a).[1]

---

[1] Section 1546(a) of the United States Code, in pertinent part, subjects to a fine, imprisonment up to 25 years, or both:

> Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact [.]

Such acts, while not within the purview of those enumerated in section 101(f) of the Act, still evidence a lack of good moral character under the last paragraph of that section and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Section 101 of the Act prescribes, in pertinent part: The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further provides, in pertinent part:

> A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . . committed unlawful acts that adversely reflect upon his or her good moral character . . . although the acts do not require an automatic finding of lack of good moral character.

The petitioner has also failed to establish extenuating circumstances relating to any of the acts noted above.

Battery or Extreme Cruelty

As indicated in our May 12, 2008 notice, the testimonial evidence submitted by the petitioner and on his behalf was not sufficient to establish a claim of abuse. The statements by the petitioner's friends contained only general statements regarding the alleged abuse. The statements lacked any specific probative details to support the petitioner's claims of battery or extreme cruelty. We found the remaining evidence, which consisted of the petitioner's statement and [redacted]'s report were equally deficient. We noted that the petitioner's claims that his spouse would not take phone messages, poured cold water on him on an unspecified occasion, that she locked him out of the house, called him names and turned the volume up on the television and radio were insufficient to demonstrate that his spouse's behavior was comparable to any of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The petitioner's description of his spouse's non-physical behavior does not demonstrate that her actions were accompanied by coercive acts or threats of harm, or that her actions were aimed at ensuring dominance or control over the petitioner.

As it relates to the physical abuse claimed by the petitioner in his statement and as reported by [redacted] we found the claims lacked sufficient probative details to support a finding of battery. Further, we noted inconsistencies between the descriptions of the alleged physical abuse contained in the petitioner's statement and descriptions contained in [redacted]'s report. Finally, in addition to the specific discrepancies noted in regard to the petitioner's claim of abuse, we found that the record as a whole presented a significant history of unreliability of the petitioner's overall credibility. We note that while [redacted] assessment indicates that the petitioner is a citizen of [redacted] the petitioner also submitted an asylum application in which he asserted that he was Nigerian. Therefore, as the

---

18 U.S.C. § 1546(a) (2008).

assessment is based solely upon the statements of the petitioner, even this finding in the assessment is in doubt.

In his July 10, 2008 affidavit submitted in response to the AAO's notice, the petitioner states that there are "not necessarily inconsistencies" between his affidavit and report. The petitioner states:

> Relative to the incident with the knife, I am only depicting one specific incident. I did not state in my affidavit that my spouse . . . never attacked me again. With respect to punching, which I received from my spouse, s report is only depicting a single incident, and not stating that I was never punched before by my spouse.

We are not persuaded by the petitioner's explanation. The petitioner offers no statement from Dr. to clarify his statement. Therefore, the petitioner's own explanation as to what reported and why he reported it is not convincing. Regardless, despite the fact that we specifically noted that the petitioner's description of events lacked sufficient details, in his July 10, 2008 affidavit the petitioner again provides only vague references to the alleged abuse. He states only that on "several occasions" his spouse tried to stab him and provides no further description of any specific incident and no probative details regarding the unspecified occasions where his spouse allegedly punched him and attempted to stab him.

The supplemental letters from and contain no further discussion of the alleged abuse. In her new letter dated July 20, 2008, reiterates the claims made in her previous statement such as that the petitioner's spouse did not give him messages and locked him out of the house. She does not, however, offer any additional details regarding any of the petitioner's claims to support a finding of abuse. September 19, 2008 and July 15, 2008 letters are equally insufficient. Her September 19, 2008 letter contains no reference to the alleged abuse and her July 15, 2008 letter simply recounts, without probative detail, the petitioner's claims regarding having cold water poured on him and his spouse's attempt to stab him with a knife.

In conclusion, the petitioner submitted no documentary evidence of the claimed abuse and failed to submit detailed and probative testimonial evidence of the alleged battery and extreme cruelty. The vagueness of the petitioner's testimonial evidence and the lack of documentary evidence are sufficient to find that the petitioner has failed to meet his burden of proof. Accordingly, the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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.