

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services



69

FILE:



Office: VERMONT SERVICE CENTER

Date:

JAN 07 2009

EAC 04 147 54036

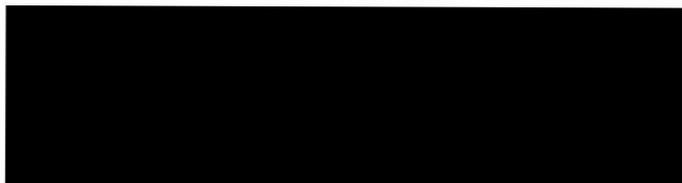
IN RE:

Petitioner:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed.

The petitioner seeks immigrant classification 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 battered or subjected to extreme cruelty by a United States citizen.

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

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are also explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

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

\* \* \*

(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.

In this matter, the director initially denied the petition on August 5, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his former wife during their marriage and had failed to establish that he had entered into the qualifying relationship in good faith. The AAO concurred with the director's determination on June 20, 2006 but remanded the matter for issuance of a Notice of Intent to Deny (NOID) the petition in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). The AAO incorporates its discussion of the pertinent facts and relevant evidence as set forth in its June 20, 2006 decision here by reference.

Upon remand, the director issued a NOID on July 27, 2006. In a September 23, 2006 response, counsel for the petitioner submitted: the petitioner's supplemental affidavit notarized September 17, 2006; a notarized psychological evaluation of the petitioner prepared by [REDACTED]; a request for a copy of a 911 record made to the Miami-Dade police department and a response from the Miami-Dade police department; a copy of a Wachovia cover letter dated June 30, 2006 and copies of First Union bank statements for the periods of February 2, 2001 to March 31, 2001, April 1, 2001 to June 30, 2001, July 1, 2001 to September 30, 2001, October 1, 2001 to December 31, 2001, January 1, 2002 to March 31, 2002, and April 1, 2002 to June 30, 2002; copies of an Allstate Insurance Auto Policy issued March 31, 2001 to September 30, 2001; a certified copy of a printout from the Miami-Dade School District showing the "last chg" regarding the petitioner's administrative file as June 9, 2004, that also showed that the petitioner was an inactive student, and further showed the petitioner's former spouse as an emergency contact; an updated police clearance; and copies of a medical record from [REDACTED]. In a supplemental response to the NOID, dated October 27, 2006, counsel for the petitioner submitted an affidavit signed by [REDACTED], the petitioner's uncle.

On January 4, 2007, the director denied the petition, observing that the petitioner had only submitted the affidavit of [REDACTED] in response to the NOID. The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his former spouse and that he had not established with clear and convincing evidence<sup>1</sup> that he had entered into the qualifying relationship in good faith. On January 10, 2007, counsel for the petitioner asserted that the petitioner had not considered all the evidence submitted in response to the NOID. On March 16, 2007, the director again denied the petition noting that the only evidence submitted to establish that the petitioner had been subjected to abuse by his former spouse and to show that he had entered into the marriage in good faith is the affidavit of [REDACTED]. The director also noted inconsistencies and deficiencies of evidence previously submitted including the petitioner's affidavit and observed that the petitioner's affidavit did not appear to overcome the unavailability of clear and convincing evidence. The director certified his decision to the AAO for review. On certification, counsel for the petitioner asserts that the director failed to consider all the evidence submitted in response to the NOID and thus the matter should be remanded for the director to enter a new decision granting eligibility based upon

---

<sup>1</sup> The petitioner in this matter is subject to section 204(g) of the Act, section 245(e) of the Act, and the regulation at 8 C.F.R. § 245(c)(9)(v) as an alien who married a United States citizen while in removal proceedings; thus he is required to establish that his marriage was entered into in good faith with clear and convincing evidence.

the totality of the evidence.

Counsel's assertion on certification is not persuasive. Although the director did not identify each specific document submitted in response to the NOID, documents such as bank statements and the auto insurance policy had been previously submitted and their deficiencies discussed. In addition, upon review of the psychological evaluation signed by [REDACTED] on September 22, 2006 regarding a clinical interview and assessment of the petitioner on March 17, 2004, almost three years after the former couple separated (July 18, 2001) and two years after their divorce (April 22, 2002), the AAO finds the evaluation has little significance in establishing abuse that allegedly occurred during the marriage. The AAO acknowledges that the director could have better articulated the deficiencies in the record regarding various documents submitted as well as the deficiencies and inconsistencies in the [REDACTED] affidavit and the petitioner's supplemental affidavit. However, the AAO sees no purpose in remanding the matter when the AAO has *de novo* authority to review matters properly before it, and will address the documents submitted in response to the NOID and that have been re-submitted on certification. As observed above, the AAO incorporates its discussion of the pertinent facts and relevant evidence as set forth in its June 20, 2006 decision here by reference.

The AAO notes that the record shows that the petitioner and S-J<sup>2</sup> married on March 12, 2001; that the petitioner was ordered removed from the United States on November 22, 2000; that the petitioner was issued a final removal order on July 30, 2001; that the petitioner no longer resided with his wife as of July 18, 2001; and that the petitioner and S-J- divorced on April 22, 2002.

#### *Battery or Extreme Cruelty*

On certification, the petitioner submitted a personal statement attempting to resolve inconsistencies in his prior statement, his testimony in regard to his asylum hearing, his report to the local police regarding the July 18, 2001 incident, and photographs submitted to show bite marks allegedly perpetrated by S-J- on July 18, 2001. The police report shows that the July 18, 2001 incident occurred at [REDACTED], Miami, Florida. The petitioner notes an error in his previous statement and indicates that the bite marks allegedly made by S-J- were to his left side of his upper torso in the shoulder area and on the right side of his ribs/chest, high up. The petitioner declares that the photographs show the bite marks as he has clarified and did not result from injuries suffered by a beating while in Haiti as described in his asylum application. The petitioner also references the doctor who examined him in 2005 regarding injuries he had suffered and the doctor's statement that "due to the passage of time and the degree of healing, it is difficult to discern the exact cause of the scar, however, the size of the scar is consistent with the parameters of an adult human mouth." The petitioner further explains that he did not report the physical injuries to the police on July 18, 2001 because he did not want S-J- arrested, he was embarrassed, and he thought that S-J- might retaliate against him. The record on certification includes the petitioner's attempt, through his counsel, to obtain the transcript of the 911 call made on July 18, 2001 and the police department's response that the call

---

<sup>2</sup> Name withheld to protect the individual's identity.

had been erased.

Upon review of the totality of the evidence regarding the alleged battery, the AAO finds the record insufficient. The AAO does not find the petitioner's personal statement sufficient to establish that S-J- perpetrated a battery against him in the form of biting. The report the petitioner made to the police did not include any indication that the petitioner had been subjected to battery. The police report indicates the dispute was verbal. The petitioner's reasons for not reporting the alleged battery to the police are not persuasive. For example, it seems the petitioner's initial call to the police would have resulted in retaliation, if S-J- were so inclined. Of significance is that the police noted that no injuries had been sustained in the incident and reported only on the damaged clothing. The police report indicates that the petitioner's former spouse had not been interviewed as she had fled prior to their arrival. The AAO also finds the photographs, the doctor's statement, and the petitioner's statement unpersuasive. The petitioner has not presented a consistent account of the alleged injuries and has not offered independent evidence to substantiate that he was in fact injured. The police, the individuals most likely to have the ability to confirm that the petitioner was injured in the July 18, 2001 incident, did not do so. The doctor in his report of the petitioner's examination made four years after the incident notes that it is difficult to discern the cause of the scar but that it could be that of a human bite mark. This statement notes the possibility the scar is from a bite mark but is essentially inconclusive regarding the cause of the scar. The record does not include the statements of any witnesses to this incident and does not include records of medical treatment obtained concurrent with the incident. The record is insufficient to establish that the petitioner has been subjected to battery by his former wife.

The AAO also finds that the petitioner has not provided evidence that he has been subjected to extreme cruelty by his former spouse. Although the petitioner reported to the police that his former spouse had destroyed multiple items of his clothing, the petitioner has not established that this action and the prior arguments during his four-month marriage constituted extreme cruelty perpetrated by S-J-. The petitioner has not provided probative evidence from individuals who witnessed the verbal disputes or alleged threats. The AAO has reviewed the affidavit of [REDACTED] submitted in response to the NOID and on certification and finds that the affidavit contains inherent inconsistencies as observed by the director as well as inconsistencies with other evidence in the record. For example, [REDACTED] declares that he was out of town when the alleged July 18, 2001 incident took place and that when he returned the petitioner told him that S-J- had left but did not provide further details. The AAO observes that [REDACTED] and the petitioner both indicate that S-J- lived in the same house as his uncle who resides on [REDACTED] in Miami, Florida. The police report indicates that the July 18, 2001 incident took place at [REDACTED] Miami, Florida. The record does not include evidence resolving this inconsistency. 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 (BIA 1988). The testimony of [REDACTED] has minimal probative value.

The AAO finds that independent evidence to assist in establishing that the petitioner experienced extreme cruelty is lacking in the record. The AAO notes that not all forms of marital discord rise to the

level of battery or extreme cruelty as set forth in the regulations. In this matter, the petitioner has offered no specific testimonial evidence regarding the alleged extreme cruelty perpetrated against him by S-J- which demonstrates that her behavior rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Accordingly, the petitioner failed to establish that he was battered or subjected to extreme cruelty by S-J- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner failed to establish that he was battered or subjected to extreme cruelty by his former spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### *Good Faith Entry into Marriage*

In response to the NOID and on certification, the petitioner provides his supplemental personal statement; a copy of a Wachovia cover letter dated June 30, 2006 and copies of First Union bank statements for the periods of February 2, 2001 to March 31, 2001, April 1, 2001 to June 30, 2001, July 1, 2001 to September 30, 2001, October 1, 2001 to December 31, 2001, January 1, 2002 to March 31, 2002, and April 1, 2002 to June 30, 2002; copies of an Allstate Insurance Auto Policy issued March 31, 2001 to September 30, 2001; a certified copy of a printout from the Miami-Dade School District showing the "last chg" regarding the petitioner's administrative file as June 9, 2004, that also showed that the petitioner was an inactive student, and further showed the petitioner's former spouse as an emergency contact; and his uncle's [REDACTED] affidavit. These documents apparently have been submitted and re-submitted to assist in establishing that the petitioner entered into the qualifying relationship in good faith by clear and convincing evidence. The AAO has reviewed the documentation submitted and finds the documentation shows further inconsistencies in the record regarding the *bona fides* of the marriage between the petitioner and S-J-. The AAO has reviewed the petitioner's supplemental statement and notes that the petitioner declares that his intent in marrying S-J- was to establish a life together. The petitioner provides details of his courtship of S-J- and indicates that he lived with his uncle at an address on [REDACTED] in Miami, Florida during the courtship. The petitioner also refers to having S-J- over at his place, but does not identify this as an address that is different than his uncle's address. In the petitioner's uncle's October 5, 2006 affidavit, the affiant declares that he witnessed the petitioner's and S-J-'s courtship as the petitioner lived with him at the [REDACTED] address and that after the marriage ceremony, S-J- moved into his house on [REDACTED]. The police report is for an incident occurring at [REDACTED], Miami, Florida. The AAO has also reviewed the January 27, 2004 affidavit of the petitioner's pastor, [REDACTED] who declares that at some unspecified time, the petitioner and S-J- rented a portion of a house at [REDACTED] and that after an incident on an unspecified date, S-J- moved out of the house.

Upon review of the independent documentation provided by the petitioner to establish that he entered into the qualifying relationship in good faith and that he intended to start a life together with S-J-, the AAO makes the following observations: the bank statement for the period of February 2, 2001 to March 31, 2001, is addressed only to the petitioner at the [REDACTED] address and shows that an account has been opened on February 2, 2002; the bank statement for April 1, 2001 to June 30, 2001,

shows both the petitioner and S-J- as the account holders and indicates the address is “returned mail;” the bank statements for July 1, 2001 to September 30, 2001, for October 1, 2001 to December 31, 2001, and for January 1, 2002 to March 31, 2002, show both the petitioner and S-J- as account holders and the address as [REDACTED]; the bank statement for April 1, 2002 to June 30, 2002, shows both the petitioner and S-J- as account holders, that the address is [REDACTED], and that the account was closed. The AAO also observes that the record includes three copies of an Allstate Insurance Auto Policy issued for the period of March 31, 2001 to September 30, 2001. The three auto policies although for the same time period have been sent to: (1) the petitioner and S-J- at an address on [REDACTED] (2) S-J- only at the address on [REDACTED] and (3) S-J- only at the address on [REDACTED]. The certified copy of a printout from the Miami-Dade School District shows that the “last chg” regarding the petitioner’s administrative file is June 9, 2004, that the petitioner is an inactive student, and that his address is [REDACTED].

Based upon the review of the documentation in the record, the AAO does not find that the bank statements, the auto policies, or the Miami-Dade School District printout constitute evidence of the petitioner and S-J-’s life together as a couple. The bank statements do not show that both parties accessed the account. The record does not include an explanation regarding why an auto insurance policy would be issued two or three times for the same time period and would include the petitioner on one of the policies but not at an address that the petitioner has ever claimed to have been in residence. The school district printout showing S-J- as the petitioner’s emergency contact does not reflect when S-J- was established as an emergency contact and moreover, is not evidence of the petitioner’s intent to enter into the marriage in good faith. Further, the number of addresses used for various transactions as well as the inconsistencies in the affidavits of the petitioner’s pastor and his uncle, undermine the petitioner’s statements that he married S-J- with the intent to establish a life together. Upon review of the affidavits, including the petitioner’s supplemental affidavit submitted in response to the NOID and on certification, the AAO finds that the petitioner has not established by clear and convincing evidence that he entered into the marriage in good faith. Accordingly, the petitioner has not demonstrated that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act and as required by section 204(g) of the Act.

Beyond the decision of the director, the director found that the petitioner had established that he resided with S-J- based solely on the January 27, 2004 affidavit of the petitioner’s pastor, [REDACTED]. The AAO disagrees that this affidavit establishes that the petitioner resided with S-J- as set forth in the regulations at 8 C.F.R. § 204.2(c)(1) and 8 C.F.R. § 204.2(c)(2)(iii). Upon review of the numerous inconsistencies in the record regarding the petitioner’s and S-J-’s address as noted above, the petitioner has not established that the couple ever resided together. Moreover, the record includes a Form G-325A, Biographical Information, for both the petitioner and S-J-. The Form G-325A signed by S-J- shows that S-J- lived on [REDACTED] in Miami, Florida from December 1996 to March 2001 and then on [REDACTED] Miami, Florida from March 2001 to present (April 17, 2001). The Form G-325A signed by the petitioner shows that he lived: on [REDACTED] Miami, Florida from March 2000 to December 2000; on [REDACTED] Miami, Florida from December 2000 to March 2001; and on [REDACTED], Miami, Florida from March 2001 to present (April 17, 2004).

Although the G-325As indicate that the both the petitioner and S-J- resided on [REDACTED] in March and April of 2001, this address is inconsistent with the affidavits submitted by the petitioner and on his behalf as well as other documentation in the record. The numerous inconsistencies in the record regarding the petitioner's residence and that of S-J- preclude a determination that the petitioner and S-J- resided together. For this additional reason, the petition will not be approved.

Beyond the decision of the director further, the AAO finds that the petitioner has not established a qualifying relationship with S-J- when the petition was filed and eligibility for immigrant classification. The language of the statute clearly indicates that to remain eligible for classification despite no longer being married to a United States citizen, an alien must have been the *bona fide* spouse of a United States citizen "within the past two years" and demonstrate a connection between the abuse and the legal termination of the marriage. 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As previously noted, the petitioner in this matter was divorced from his spouse for almost two years when the petition was filed. The petitioner does not claim and the record does not show that the petitioner's divorce from S-J- was connected to the claimed abuse. Accordingly, the petitioner has failed to establish a qualifying relationship with the perpetrator of the claimed abuse and eligibility for immigrant classification based on a qualifying relationship. For these additional reasons, the petition will not be approved.

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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied 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. The petitioner has not sustained that burden.

**ORDER:** The director's March 17, 2007 decision is affirmed. The petition is denied.