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FILE: [Redacted]  
EAC 08 077 50825

Office: VERMONT SERVICE CENTER

Date: JUL 08 2009

IN RE: [Redacted]

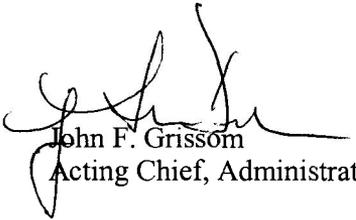
PETITION: Petition for Special Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

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 instant petition is the third Form I-360 filing by the petitioner. The petitioner filed the first Form I-360 on August 27, 2004.<sup>1</sup> The director issued a request for additional evidence on March 29, 2005, and a notice of intent to deny the petition on February 28, 2006. The director denied the petition on June 2, 2006. The petitioner filed the second petition on December 8, 2006.<sup>2</sup> The director issued a NOID on June 19, 2007, and he denied the petition on September 19, 2007. The contents of those petitions are part of the record of proceeding, and their contents need not be repeated here.

The petitioner filed the instant Form I-360 on January 15, 2008. After the petitioner failed to respond to his February 24, 2009 NOID, the director denied the petition on May 7, 2009, on the basis of his determination that the petitioner had failed to establish (1) that he was subjected to battery and/or extreme cruelty by G-J-<sup>3</sup> his United States citizen wife; (2) that he is a person of good moral character; and (3) that he entered into the marriage with G-J- in good faith. The director certified his decision to the AAO for review.

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].

<sup>1</sup> See EAC 04 248 53275, filed August 27, 2004, and denied June 2, 2006.

<sup>2</sup> See EAC 07 055 51186, filed December 8, 2006, and denied September 19, 2007.

<sup>3</sup> Name withheld to protect individual's identity.

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

- (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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child, 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.

\* \* \*

- (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.

### **Battery or Extreme Cruelty**

The first issue before the AAO is whether the petitioner has establish that he was subjected to battery or extreme cruelty by G-J-. In support of his assertion that he was subjected to abuse, the petitioner submits self-affidavits, affidavits from friends, a psychological evaluation, and a copy of a domestic violence complaint against him, which he claims was the result of a false charge by G-J-.

In his August 20, 2004 self-affidavit, the petitioner stated that he and G-J- married in October 2001, and that she “began to exhibit a nasty attitude” in the summer of 2003. On one occasion, she told the petitioner that she had made him what he was, and that if ever forgot it, she would have him shipped back to Ghana, his home country. He also stated that, in September 2003, G-J- refused to let him go to work one morning. She yelled at him, and accused him of cheating on her. The petitioner stated that G-J- grabbed his pants, and would not let him take them off. The petitioner testified that he called the police, and that the police came to the house and asked G-J- to leave and cool off. According to the petitioner, G-J- then “perpetrated a wicked fraud”

against him by filing a false domestic violence complaint. However, the petitioner stated that he was eventually vindicated, and the complaint was dismissed.

The petitioner also submitted an August 24, 2004 affidavit from [REDACTED] who stated that he has observed G-J- behaving in a rude and condescending manner toward the petitioner. He stated that, on one occasion, while at the couple's home he heard G-J- ask the petitioner why he always had his African friends to the house.

The director found the petitioner's submission insufficient to establish that he had been subjected to battery or extreme cruelty, and issued a request for additional evidence. In his March 29, 2005 request for additional evidence, the director notified the petitioner that the testimony of his August 20, 2004 self-affidavit was insufficiently detailed.

The petitioner responded on January 3, 2006, and submitted additional testimony and evidence. In his October 17, 2005 self-affidavit, the petitioner stated that the actions of G-J- caused him to suffer from severe depression, and that they were a factor in the failure of his business. He offered no further testimony regarding the alleged abuse.

In his October 17, 2005 affidavit, [REDACTED] stated that G-J- was consumed with jealousy, and "had trouble handling the fact that [the petitioner] had an entire community of friends in the Ghanaian community." He also stated that G-J-'s objective in mistreating the petitioner was to use his immigration status as a means of keeping him away from that community.

The petitioner also submitted a psychological evaluation from [REDACTED], who interviewed the petitioner on April 18, 2005. In her letter, [REDACTED] stated that the petitioner told her that, beginning in 2003, G-J- began coming to his place of employment and demanding money. When he did not give her money, she would create a "scene" in front of customers. She stated that the petitioner told her that G-J-'s behavior became so outrageous that at one point the owners of neighboring businesses suggested that he either keep her away from the store or call the police, as her behavior was beginning to impact their businesses as well. She stated that the petitioner told her that G-J-'s relatives became a constant presence in their apartment, and that they took items from the apartment, which became annoying. [REDACTED] also stated that the petitioner told her that G-J- accused him of adultery; made a false claim of domestic violence to the police; threatened his immigration status; called him names; controlled the couple's sex life; and made a joke about murdering him, which he took seriously. [REDACTED] diagnosed the petitioner with major depressive disorder.

The director again found the petitioner's evidence unconvincing, and issued a NOID on February 28, 2006. The director noted that [REDACTED]'s opinions were based on a single interview with the petitioner, and stated that the testimony of both the petitioner and his affiants was lacking in probative details.

In his April 25, 2006 self-affidavit, the petitioner stated that he had suffered from humiliation, threats, and false accusations of domestic violence, and that the government was now adding insult to injury by questioning his credibility. The petitioner stated that USCIS was downplaying the significance of the domestic violence charge against him, which he again alleged to be a false charge, and expressed his surprise at such downplaying. According to the petitioner, “[t]he fact that she made the charge and requested that it be dismissed shows that she was suing the system in order to teach me that she could ruin me at any time.”

In his April 25, 2006 letter, counsel contended that the domestic violence charge that G-J- filed against the petitioner constituted cruelty in and of itself.

The director denied the first petition on June 2, 2006. With regard to the domestic claim complaint filed against the petitioner, the director noted that the document submitted by the petitioner provided no details surrounding the charges, and that the petitioner submitted no other paperwork regarding the charge. The director also noted that, although the petitioner testified that he had called the police, and that they had come to the couple’s residence and asked G-J- to leave, the petitioner had not submitted the police report relating to the incident. Nor had he submitted the police report relating to his arrest on the domestic violence charge. As such, according to the director, it was not clear what actually happened.

With regard to the testimony of [REDACTED], the director found that although his testimony indicated marital discord, the actions of G-J- described in his testimony did not rise to the level of battery or extreme cruelty.

With regard to the psychological evaluation, the director noted the testimony of the petitioner to [REDACTED] differed from the testimony in his self-affidavits. As noted by the director, although [REDACTED] stated that the petitioner told her about problems with G-J-’s relatives, of G-J- causing disruptions at the petitioner’s place of employment, of G-J- demanding money, and of G-J- controlling the couple’s sex life in his own testimony, the petitioner made no such allegations in his own testimony. According to the director’s the discrepancies between the petitioner’s testimony as offered to [REDACTED] and that offered to USCIS directly undermined the credibility of his testimony.

Finally, with regard to the testimony of [REDACTED] the director found his testimony insufficiently detailed to establish the petitioner’s claim of abuse. The director also found that, furthermore, [REDACTED] knowledge of the situation did not appear to be based on first-hand knowledge. Finally, given that [REDACTED] had handwritten his address in a “fill-in-the-blank” portion of the affidavit, the director questioned whether [REDACTED] had actually prepared the affidavit, or whether it had been written by someone else.

Accordingly, the director found that, in the aggregate, the evidence of record failed to establish that the petitioner had been subjected to battery or extreme cruelty.

Rather than appealing the director's denial, the petitioner filed a second Form I-360 on December 8, 2006. In his November 18, 2006 self-affidavit, the petitioner stated the following:

It is incontrovertible that [G-J-] attacked me and then turned the tables and made a false domestic violence complaint against me that was dismissed. This in and of itself is wicked and cruel. She put me in contact with the criminal justice system for absolutely no reason. Luckily I was vindicated.

However, the petitioner did not submit any new documentation regarding the domestic violence complaint that was not already contained in the record of proceeding. He did not submit the police report relating to his arrest; nor did he submit the police report relating to his claim that he had called the police regarding the behavior of G-J-, and that they had asked her to leave the residence and cool down. Therefore, there was no evidence in the record to support his assertion that it is "incontrovertible" that the domestic violence complaint was a false charge.

The petitioner also stated in his November 18, 2006 self-affidavit that G-J- was jealous, insecure, and suspicious; and that she called him at work to make sure he was not with a girlfriend.

The petitioner also submitted another letter from [REDACTED] In his November 1, 2006 letter, [REDACTED] stated that although the director had stated he was not an eyewitness to specific incidents of abuse or cruelty, he knew that G-J- was jealous, that she always harassed him, that she always kept tabs on him, and that she threatened his immigration status. However, he did not indicate how he knew this information; i.e., whether he personally witnessed the behavior of G-J-, or whether his testimony was based upon the petitioner's version of events.

Finally, the petitioner submitted another letter from [REDACTED] In his November 18, 2006 letter, [REDACTED] stated that G-J- was rude to him on a number of occasions when he was in the couple's home, and that she insulted him by telling him that she was tired of the petitioner bringing African people into their home. [REDACTED] stated that he found the behavior of G-J- "quite problematic."

The director found the petitioner's submissions unconvincing, and issued a NOID on June 19, 2007. In his NOID, the director incorporated by reference his June 2, 2006 denial of the petitioner's first Form I-360 filing. He stated that his previous denial had addressed the deficiencies contained in the petitioner's evidence, and that he would not repeat that discussion. With regard to the new evidence submitted by the petitioner, the director noted that the petitioner's new self-affidavit reiterated many of his previous claims, which had already been deemed insufficient. The director made the same findings with regard to the testimony of Mr. [REDACTED] With regard to the new testimony of [REDACTED], the director stated that he had failed to provide specific information regarding his claims. For example, it was unclear what conversation had taken place, and when it had occurred. The director also noted that the petitioner had never submitted the police report regarding his arrest for domestic violence or the

police report relating to his own call to the police. Nor had he submitted any explanation for his failure to do so.

The petitioner responded to the NOID on August 14, 2007, and submitted a letter from counsel. In his August 10, 2007 letter, counsel stated that the director “seemed to be concerned with lack of specifics from witnesses and no police reports.” Counsel asserted that “it would not be credible if the witnesses happened to be around every time an incident occurred.” However, it was the petitioner who made the assertion that he had called the police, that they had come to the couple’s home, and that they had asked G-J- to leave the apartment. The director requested the police report relating to this incident several times, but the petitioner has failed to provide it. Furthermore, the petitioner claimed that he was arrested due to a false claim of domestic violence. Again, the director has requested the police report relating to that incident several times, but the petitioner has failed to provide it.

The petitioner submitted a second response to the NOID on August 27, 2007. In his August 22, 2007 self-affidavit, the petitioner stated that G-J-’s alleged false claim of domestic violence has hurt him dearly, as a “hit” comes up every time he is fingerprinted, which limits his employment opportunities. He also stated that he is unable to produce witnesses to the abuse he allegedly endured, as his marriage is a private matter.

The director denied the petition on September 19, 2007. The director found that the testimony submitted in response to the NOID merely reiterated the previous testimony of record, and failed to overcome the grounds of denial set forth in the NOID.

Rather than appealing the director’s denial, the petitioner filed a third Form I-360 on January 15, 2008. The petitioner submitted updated affidavits from [REDACTED] and [REDACTED]. In his December 28, 2007 affidavit, [REDACTED] stated that he knows that the domestic violence complaint was a false charge, and that the petitioner is a good person. In his December 28, 2007 affidavit, [REDACTED] states that G-J- was a jealous person; that she used curse words with impunity; that she was vengeful; and that she made a false accusation of domestic violence. Neither individual indicated how they knew that the domestic violence charge was a false charge.

The director issued a NOID on February 24, 2009. The director noted that although the petitioner and his affiants have claimed on multiple occasions that the domestic violence complaint was the result of a false charge by G-J-, she was not listed as the plaintiff on the document submitted by the petitioner. The director requested a copy of the police report for the incident, as well as the police report pertaining to the time that the petitioner called the police with regard to G-J-’s behavior.

The petitioner did not respond to the director’s NOID. Accordingly, the director denied the petition on May 7, 2009, and has certified his decision to the AAO for review. The petitioner

has not submitted a response to the director's notice of certification. Accordingly, the AAO considers the record complete and ready for adjudication.

Upon review of the entire record of proceeding, the AAO agrees with the director's determination that the petitioner has failed to establish that he was subjected to battery or extreme cruelty by G-J-. Although the petitioner claims that he called the police regarding the behavior of G-J-, and that they came to the couple's home and asked G-J- to leave, the petitioner has failed, despite several requests by the director, to submit a copy of the police report relating to that incident.

The record establishes that a domestic violence complaint was filed against the petitioner. The petitioner contends that this was a false charge made by G-J-, and that it was part of her overall pattern of abuse. However, the record fails to support the petitioner's assertion. The petitioner has failed, despite several requests by the director, to submit a copy of the police report relating to his arrest. Nor has the charging document, or any other paperwork other than the dismissal, been submitted. While the record indicates clearly that the charge was dismissed, it does not indicate that the charge was brought by G-J- as part of a larger pattern of abuse. Nor do the assertions of the affiants that the domestic violence complaint was a false charge establish that such was the case, as they have not indicated the source of such knowledge.

With regard to the other allegations of abuse, the AAO finds that the testimony of the petitioner and his affiants is insufficiently vague, general, and lacking in probative details regarding the alleged abuse.

Nor does [redacted] evaluation establish that the petitioner was subjected to battery or extreme cruelty. First, although the input of any mental health professional is respected and valuable, the AAO notes that [redacted]'s letter was based upon one interview with the petitioner. The record fails to reflect an ongoing relationship between a mental health professional and the petitioner, or any history of treatment for the major depressive disorder she diagnosed. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [redacted] findings speculative and diminishing the evidentiary weight of her letter. Moreover, the AAO notes that the testimony of the petitioner to [redacted] differed from the testimony he provided in his self-affidavits, which raises questions regarding the credibility of his testimony.

In his December 29, 2005 letter, counsel cited to *Hernandez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> Cir. 2004). However, the AAO does not find counsel's citation persuasive. The actions and incidents described in the petitioner's testimony and on his behalf by the affiants fail to meet the standard described in the *Hernandez*. In *Hernandez*, the petitioner had been violently physically assaulted by her spouse on several occasions. After two assaults, which took place while Hernandez resided with her spouse in Mexico, Hernandez 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

Hernandez's phone number in the United States and persuaded her to let him visit her in the United States. Once in the United States, Hernandez's spouse convinced Hernandez of his remorse and agreed to marriage counseling. The two returned to Mexico where, after a brief period, Hernandez 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 Hernandez'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 Board of Immigration Appeals (BIA), the BIA reversed the Immigration Judge's adverse credibility determination but concluded that because the physical violence occurred in Mexico, Hernandez was unable to show that she had been battered by or subjected to extreme cruelty in the United States.<sup>4</sup> In reviewing the BIA's decision, the 9th 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 the Court was whether Hernandez'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 Hernandez and her spouse in Los Angeles made up an integral stage in the cycle of domestic violence, and thus the actions taken by Hernandez's spouse in order to lure Hernandez 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 9th Circuit recognized that the interaction that took place between Hernandez and her spouse in the United States was during "a well-recognized stage within the cycle of violence," known as the "contrite" phase is both "psychologically and **practically crucial to maintaining the batterer's control.**" *Id.* at 828. **The general claims** contained in the record fail to establish that the petitioner was the victim of any act or threatened act of violence or that his spouse's non-physical behavior was accompanied by any coercive actions or threats of harm or that her actions were aimed at insuring dominance or control over the petitioner.

Finally, the AAO turns to counsel's assertion, which he has made on several occasions, that the director has failed to apply the "any credible evidence" standard to the petitioner's case. Counsel has misunderstood the "any credible evidence" standard to which he cites. Both the director and the AAO have accepted the evidence submitted by the petitioner, and both have considered it. However, while that evidence may be credible, it is insufficient to establish the petitioner's claim. 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." Section

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<sup>4</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 Hernandez' petition did include this requirement.

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 forms of relevant credible 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 his or 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. While the evidence of record may be credible, the AAO does not find it sufficient to satisfy the petitioner's burden of proof.

For all of these reasons, the AAO agrees with the director's determination that the petitioner has failed to establish that G-J- 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 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 January 2005 and ending in January 2008).

The record contains a criminal background check issued by the State of New Jersey on September 22, 2006. However, the record has no local police clearances or state-issued criminal background checks covering the period September 23, 2006 through January 2008, as required by 8 C.F.R. § 204.2(c)(2)(v). The petitioner was placed on notice by the director in his February 24, 2009 NOID that this criminal background check was insufficient. However, the petitioner has elected not to respond.

The regulation at 8 C.F.R. § 204.2(c)(2)(v) is clear. In order to establish that he is a person of good moral character as defined at 8 C.F.R. § 204.2(c)(2)(v), the petitioner is required to submit 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 January 2005 and ending in January 2008). The September 22, 2006 criminal background check does not satisfy the regulation, as it does not cover the entire three-year period immediately preceding the filing of the self-petition. The petitioner has now been afforded two opportunities to submit the requisite police clearance, but has elected not to do so. The language of 8 C.F.R. § 204.2(c)(2)(v) is clear, and the AAO is

without authority to waive that regulation. Absent 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, the petitioner has failed 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 third issue on appeal is whether the petitioner has established that he entered into marriage with G-J- in good faith. As evidence that he entered into the marriage in good faith, the petitioner submitted copies of utility bills, a copy of a life insurance application and policy page, testimony, and three photographs.

As was noted by the director in his February 24, 2009 NOID, the petitioner was scheduled for an interview with USCIS in connection with his permanent residency petition on October 29, 2003. All of the utility bills and the life insurance policy are dated from September 2003 or later, and the director noted that G-J- did not sign the life insurance application, and it was unclear whether the policy remained active after its inception. With regard to the testimony of the petitioner's affiants, the director notified the petitioner that he found their testimony insufficiently vague and lacking in probative details. Finally, the director noted that the petitioner claimed to have begun dating G-J- in 1998, and that they lived together until 2006. The director stated that "[i]t seems reasonable to conclude that additional evidence is available for a relationship spanning eight (8) years."

The petitioner elected not to respond to the director's NOID, nor has he responded to the director's May 7, 2009 denial and notice of certification.

Upon review of the entire record of proceeding, the AAO agrees with the director's determination that the petitioner has failed to establish that he entered into the marriage in good faith. The AAO agrees with the director's determination with regard to the petitioner's evidence: most of it is dated from the time during which the petitioner was preparing for a permanent residency interview. The AAO also questions why further evidence cannot be produced regarding a relationship that lasted eight years, and shares the director's opinion that the testimony of the petitioner's affiants is too vague, generalized, and lacking in probative detail to establish that he entered into the marriage in good faith.

With regard to his intentions upon entering into the marriage, the petitioner stated in his August 20, 2004 self-affidavit that he met G-J- in the summer of 1998 at a wedding. He stated that he had planned to return to Ghana, but that G-J- convinced him to stay, telling him that they made a good team. They married in October 2001. The petitioner's testimony with regard to his intentions upon entering into the marriage is insufficiently vague and lacking in detail. The petitioner's testimony lacks detailed information regarding the couple's first introductions; their first impressions of one another; their decision to date; their first date; their courtship; their

decision to marry; their engagement; and their wedding. In the absence of documentary evidence, such testimony would have allowed the AAO to examine the petitioner's intentions upon entering into the marriage. The petitioner has failed to demonstrate that he entered into marriage with G-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### **Conclusion**

The petitioner has failed to establish that he was subjected to battery and/or extreme cruelty by G-J-; that he is a person of good moral character; and that he entered into marriage with G-J- in good faith. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and his petition must be denied. The director's decision will be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The director's May 7, 2009 decision is affirmed. The petition is denied.