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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 08 2009
EAC 07 097 51802

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and, in response to a motion to reconsider, affirmed his decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that he shared a joint residence with his wife; (2) that his wife subjected him to battery or extreme cruelty; and (3) that he entered into marriage with his wife in good faith.

Newly-retained counsel filed a timely appeal on July 21, 2008.

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

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

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

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

> (v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
>
> (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape,

molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen ... spouse, must have been perpetrated against the self-petitioner ... and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(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.

* * *

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

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that

> the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.
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> * * *
>
> (vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner is a citizen of Cameroon who entered the United States in J-1 status on February 14, 2002. He married M-R-,[1] a citizen of the United States, on December 16, 2002. M-R- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on July 14, 2004.[2] The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. The Form I-130 was withdrawn on June 13, 2005, and the Form I-485 was denied on that same date.

The petitioner filed the instant Form I-360 on February 20, 2007. The director issued a request for additional evidence on September 14, 2007, and requested additional evidence to establish that the petitioner was subjected to battery or extreme cruelty; that he shared a joint residence with his wife; and that he entered into marriage with his wife in good faith. The petitioner responded on December 11, 2007. After considering the evidence of record, the director denied the petition on March 3, 2008.

Previous counsel filed a motion to reconsider on April 1, 2008. After considering that submission, the director affirmed his decision to deny the petition on June 18, 2008.

Joint Residence

The first issue on appeal is whether the petitioner has established that he shared a joint residence with M-R-. In the undated self-affidavit that was submitted at the time the Form I-360 was filed, the

[1] Name withheld to protect individual's identity.
[2] M-R- and the petitioner attempted to file the Forms I-130 and I-485 on May 26, 2004, but their submission was rejected as improperly filed.

petitioner stated, with regard to joint residence, that he was living with his brother and sister-in-law at the time he married M-R- in December 2002, and that M-R- moved in with them as well. According to the petitioner, his brother and sister-in-law had a two-bedroom apartment, so each couple had their own room. According to the petitioner, they lived happily. The petitioner reported that he and M-R- lived with his brother and sister-in-law at two addresses between December 2002 and August 2004: in Houston, Texas; and in Houston, Texas. He stated that in January 2004 M-R- told him that she was going to San Antonio, Texas to visit an aunt. She did not leave a contact number and, after a week, the petitioner became worried, and call M-R-'s mother and sister, who both assured him that everything was fine. However, they refused to give him her contact number. Two weeks later, he called them again, and they again assured him that everything was fine, and again refused to give the petitioner her contact number. According to the petitioner, this process repeated itself for six and a half months, until he learned that M-R- had in fact been in jail for six months. During this time, he had moved into his own apartment at in Houston, Texas. According to the petitioner, M-R- was able to find the petitioner by contacting his brother.

According to the petitioner, he and M-R- lived together from December 2002 until November 2005, except for six months in 2004 when M-R- was in jail. However, the evidence of record contains several inconsistencies with regard to the addresses at which the petitioner and M-R- allegedly lived together. On his Form G-325A, which was submitted to USCIS in July 2004, the petitioner provided the following history of alleged joint residence:

Address	Dates of Alleged Joint Residence
	August 2002 to December 2002
	December 2002 to Present (July 2004)

In contrast, on the G-325A that he submitted to USCIS on February 20, 2007, the petitioner provided the following, alternate, history of alleged joint residence:

Address	Dates of Alleged Joint Residence
	August 2002 to August 2003
	August 2003 to June 2004
	June 2004 to November 2005

In his undated letter, , the petitioner's brother, provided another version of the alleged joint residence:

> We lived all four of us [M-R-, the petitioner, and 's wife] together in the same apartments to august 2004 and moved to a house on [sic]. . . .

Further, M-R-'s Form W-2 for the tax year of 2003 indicated an address of in Spring, Texas, and her Form W-2 for the tax year of 2004 indicated an address of in Houston, Texas.

Finally, at the time the Form I-360 was filed previous counsel submitted what she represented to be a copy of the Form I-130 that M-R- had submitted on behalf of the petitioner in 2004. According to counsel, as this document listed the couple's current as address as in Houston, Texas, it constituted evidence that they had in fact shared an address at that location. However, as will be discussed later in this decision, this document was not a copy of the Form I-130 that M-R- filed on behalf of the petitioner. It does not match the Form I-130 contained in petitioner's administrative file, and the in Houston was not the current address provided by M-R- and the petitioner on the Form I-130 that was actually filed. Previous counsel's intentions in submitting this document are unclear.

In his September 14, 2007 request for additional evidence, the director requested clarification of these inconsistencies. Although the petitioner had submitted copies of the couple's 2003 and 2004 joint tax returns, the director noted that the 2003 return was stamped as received by the Internal Revenue Service (IRS) on November 8, 2004. Accordingly, and as noted by the director, the 2003 tax return was filed immediately after the petitioner received notice of his upcoming permanent residency interview. Nor was there any evidence that the 2004 return had actually been filed.[3]

Previous counsel responded to the director's request for additional evidence on December 11, 2007. Counsel did not address the director's notation that the 2003 tax return had not been filed until immediately after the petitioner had received notification of an upcoming permanent residency interview, or his notation that there was no evidence the 2004 tax return had ever been filed. Rather, previous counsel simply re-submitted copies of the tax returns, repeated the petitioner's assertion that M-R- often used her mother's address (in Spring, Texas) in order to make it more difficult to trace her crimes, and stated that the discrepancies identified by the director with regard to the couple's tax returns were insufficient to call into question the credibility of the testimony of the petitioner and his friends and family members.

As further evidence that the petitioner and M-R- had shared a joint residence, the previous counsel submitted another self-affidavit from the petitioner, affidavits from friends and family members, and copies of utility bills, financial statements, and other correspondence as evidence of a shared address.

In his October 8, 2007 affidavit, the petitioner stated, with regard to the 2003 tax return, that they had filed it in November 2004 due to M-R-'s incarceration during much of 2004. With regard to the

[3] No mention of the couple's 2002 tax return has been made.

alternate addresses utilized by M-R- during this time, the petitioner stated that M-R- is "really criminal minded on things like that," and stated that she would provide different addresses to her place of employment, to her doctor, when applying for a driver's license, etc. He stated that the addresses provided on M-R-'s Forms W-2 were those of her mother and her older sister. Like previous counsel, the petitioner did not address the director's notation that although the 2003 tax return was stamped by the IRS, there was no such evidence indicating that the 2004 return had ever actually been filed.

The petitioner also submitted affidavits from friends and family members attesting to the couple's joint residence. Although the petitioner submitted copies of utility bills, financial statements, and other correspondence as evidence of a shared address, every one of those pieces of evidence was issued after November 2004, when the couple received notification of the upcoming permanent residency interview.

In his March 3, 2008 denial, the director specifically noted all of the inconsistencies outlined above with regard to the joint residences allegedly shared by M-R- and the petitioner. The director found the non-testimonial evidence of record insufficient to establish that the petitioner and M-R- had shared a joint residence, as it was all issued after the couple had received notice of the upcoming permanent residency interview. Nor did the director find the testimony of the petitioner or his friends and family persuasive; he found their testimony alone, in the absence of reliable documentary evidence, insufficient to overcome the inconsistencies outlined above.

Previous counsel's motion to reconsider the director's denial was received at the service center on April 1, 2008. Previous counsel asserted that the petitioner had "submitted more than enough evidence in support of his claim." With regard to the inconsistencies of record regarding the specific addresses, and periods of times during which they lived at those addresses, rather than presenting new evidence previous counsel simply pointed to the testimony of the petitioner's brother, which had already been considered by the director, and had been found insufficient. With regard to the director's notation that the documentary evidence of the couple's alleged joint residency dates to a period of time after the couple had received notice of their impending permanent residency interview, previous counsel pointed to M-R-'s incarceration during the first six months of 2004.

The director considered previous counsel's motion and, on June 18, 2008, affirmed his decision to deny the petition. The director noted that although he had identified several discrepancies in his March 3, 2008 decision, previous counsel did not address all of them. Specifically, the director noted that previous counsel did not explain why she had submitted a document into the record which she claimed was a copy of the Form I-130, when it in fact was not a copy of the Form I-130 that had been filed. With regard to previous counsel's claim that that documentary evidence of joint residence could not be obtained because M-R- had been incarcerated for the first six months of 2004, the director noted that the couple had married on December 16, 2002, and that no documentation for the time period between December 16, 2002 and early 2004, when M-R- was incarcerated, had been submitted.

Newly-retained counsel's I-290B submission was received on July 21, 2008, and her supplemental submission was received on August 18, 2008. In her August 14, 2008 appellate brief, newly-retained

counsel states that "[t]he evidence in the record indicates that the [petitioner] and his spouse were living at this address [in Houston] from on or about August 2003 until on or about June 2004." While counsel is correct that some of the evidence of record indicates that the couple began residing at this address "on or about August 2003," the petitioner testified on his 2004 Form G-325A that he had begun living at that address in December 2002, as was discussed previously in this decision. Furthermore, the applicant's brother, stated in his letter that the couple lived with him and his wife at the address until August 2004. These inconsistencies in the petitioner's testimony, as well as between his own testimony and that of others, undermines the credibility of the petitioner's testimony.

Counsel turns next to the "copy" of the Form I-130 submitted by previous counsel which, as discussed previously, was not a copy of the Form I-130 as asserted by previous counsel. Counsel states the following:

> The Service in its decision claims that it is an "unsigned copy." However, it is unclear why the Service makes this conclusion when the record only contains page 1 of Form I-130.[4] Nevertheless, the record is clear that [the petitioner] and his spouse resided with [the petitioner's] brother from on or about August 2003 until the family moved into a house at the address.

Again, while some testimony of record supports counsel's assertion, other testimony contradicts it directly. The petitioner testified on his 2004 Form G-325A that he began living at the address in December 2002. The record is far from "clear" on the matter, as asserted by counsel. Again, this inconsistency undermines the credibility of the petitioner's testimony.

Counsel also looks to the November 1, 2006 affidavit of In her affidavit, stated that she works for the apartment complex at which the petitioner and M-R- lived together. Ms. stated that the petitioner and M-R- lived together at the address in Houston until early October 2005. She stated that the petitioner moved into the apartment on June 1, 2004, and that M-R- moved into the apartment "sometime in [A]ugust 2004." However, the AAO is not persuaded by testimony. letter was not prepared on company letterhead, nor was any other evidence, such as a business card, submitted to support her assertion that she worked at the apartment complex at the time she wrote the letter, as she asserted. Given that the basis of her alleged knowledge of the couple's joint residence is her status as an employee of the apartment complex in which they lived together, without some type of evidence of that employment, her assertions will be accorded little weight.

For all of these reasons, counsel's submission on appeal fails to overcome the concerns raised by the director in his denial of the petition. The petitioner has offered conflicting testimony, outlined above,

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[4] When previous counsel submitted this document, and asserted incorrectly that it was a copy of the Form I-130 that had been filed on behalf of the petitioner in 2004, she only submitted the first page of the document. The signature field is contained on the second page of the Form I-130.

regarding the dates during which he and M-R- lived together at their purported joint residences. The petitioner has been unable to articulate a consistent description of the dates and locations of his alleged joint residence with M-R-, and the evolving nature of his testimony with regard to this matter undermines the credibility of his claim.

Further, the AAO notes that the concerns of the director with regard to the couple's tax returns have never been resolved. Neither previous nor current counsel have addressed why the joint tax return for 2003 was not filed until after the couple had received notice of the upcoming permanent residency interview. Nor have they submitted evidence that the 2004 tax return submitted into the record was ever actually filed, despite the director's raising of this question on September 14, 2007. The AAO acknowledges the petitioner's testimony that M-R- was incarcerated during the first six months of 2004. However, the AAO notes that the Forms I-130 and I-485 were filed during this alleged incarceration.[5] If the petitioner and M-R- were able to file the petitioners' permanent residency application during this time, it is unclear why they could not have filed their taxes during this time. M-R-'s incarceration, therefore, does not adequately explain why the couple was unable to file their joint tax return until after they had received notification of the upcoming permanent residency interview. Moreover, even if the petitioner's argument is accepted, and the couple was in fact unable to file their tax return until after M-R-'s release, the testimony of record is that they resumed their joint residence in or around August 2004. They could have filed the tax return in August, September, or October. They did not, however, file the tax return until November 2004, after they had received notice of the permanent residency interview. Furthermore, the petitioner has never submitted any evidence that the 2004 tax return, though dated February 1, 2005, was ever filed. Despite having been specifically placed on notice by the director of his questioning as to whether this tax return was in fact ever filed, the petitioner never addressed the matter. For all of these reasons, the AAO will not accept the 2003 or 2004 tax returns as evidence of a shared joint residence.[6]

The AAO also agrees with the director's findings with regard to the documentary evidence submitted in support of the couple's alleged joint residence. Again, every single piece of this evidence was issued after the petitioner had received notification of an upcoming permanent residency interview. In November 2004, the couple received notification of the upcoming interview. It is unclear to the AAO why the petitioner is unable to produce a single document from the period between December 2002 and November 2004 to support the assertion that he and M-R- shared a joint residence. Even if the AAO accepts the petitioner's explanation that the couple was living with his brother and sister-in-law for much of that time, which would make items such as leases and utility statements unavailable, it is nonetheless unclear why other, relevant evidence cannot be shown. Given that the documentary evidence of joint residence was all produced after the couple received notice of an upcoming permanent residency interview, and that no credible explanation has been submitted as to why no

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[5] That M-R- filed the petitioner's permanent residency paperwork during her period of incarceration undermines the petitioner's testimony in his initial self-affidavit that he did not speak to M-R- for a period of seven and a half months, and that he did not know where she was during this time.
[6] The couple's 2002 tax return is not contained in the record.

evidence for the previous two years of marriage is able to be submitted, the AAO finds this evidence insufficient to establish that the couple shared a joint residence.

Accordingly, the AAO finds both the testimony and documentary evidence of record insufficient to establish the petitioner's claim. The petitioner has failed to establish by a preponderance of the evidence that he resided with M-R-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The second issue on appeal is whether the petitioner has established that M-R- subjected him to battery or extreme cruelty. In his initial self-affidavit, the petitioner stated that he realized early in the marriage that M-R- was "a rather fast spender," but that he did not know how bad things would get. Eventually, M-R- began coming to his place of work on the Fridays on which he was paid, and that he was forced to get cash from the bank and give it to her. On one Friday in September 2003, the petitioner asked to see her check since she had claimed that she, too, was paid on Fridays. According to the petitioner, this made M-R- angry, and she "gave me a good slap across the face." The petitioner stated that it was at this point that he realized M-R- did not appreciate anything he had been doing for her, and that he realized how stupid he had been to let her waste all of their income. The petitioner reported that they were usually late in paying their bills, because he had to pay for everything himself. He stated that M-R- used his social security number to open a cell phone account in July 2005. She had told him that the phone was a gift from her brother, but shortly thereafter he received a bill for over $200. He stated that M-R- told him if he called the police, she would "hurt or cut herself." According to the petitioner, by this point M-R- "was really acting crazy." In August 2005, she stole $500 from their closet. During that same month, he gave her cash to pay their utility bills, but she spent the money. According to the petitioner, "the financial abuse from my wife . . . was really devastating." The petitioner also testified that M-R- had extramarital affairs during their marriage with both men and women.

The petitioner also told the story, as outlined previously, of M-R-'s 2004 incarceration. According to the petitioner, he did not speak to M-R- for six and a half months, and did not know where she was during this time. He testified that later, he discovered that she had been incarcerated for six months during that time.

The petitioner also testified that M-R- was physically abusive, particularly during the second half of 2005. In September 2005, her mother told M-R- to "change her spending habits" and, when the petitioner agreed with her mother, M-R- "gave me another good slap across the face." Although M-R-'s mother warned her to never "lay hands on" the petitioner again, the petitioner stated that, after that time, M-R- hit him "with any object," such as shoes, books, or hair brushes. On other occasions, she would "scratch my body with an object." According to the petitioner, M-R- warned him not to call the police, and told him that because of her criminal history, if he called the police she would go to jail. As she did not wish to return to jail, she would either kill the petitioner, or kill herself, if he called the police to report the violence. She also told him that her family owned guns. In October 2005, M-R- hit him with a portable fan. The petitioner called 911, and a police officer

came to the apartment. However, he told the police officer that he did not want to file a report or press charges. The petitioner testified that the police officer advised him to move out of the apartment, and that he did so.

In his November 6, 2006 letter, stated that M-R- and the petitioner were always arguing. With regard to acts of abuse that he personally witnessed, stated that in the latter half of 2005, he witnessed the couple arguing several times, that M-R- threw things at the petitioner, and that the petitioner was forced to flee the apartment for his safety. On another occasion, he saw M-R- punch the petitioner from behind.

In his November 7, 2006 letter, with regard to acts of abuse that he personally witnessed, that he saw M-R- slap the petitioner across the face in the parking lot of a restaurant. On another occasion, he saw M-R- push the petitioner against a wall outside their apartment.

In his October 18, 2007 letter, stated that M-R- would punch the petitioner "on the least disagreement." also testified that he was personally "traumatized" by M-R-'s "abusive attitude" toward the petitioner.

In his undated letter, stated, with regard to acts of abuse that he personally witnessed, that M-R- is "rude and always very ready to put her hands on any body"; that he visited the petitioner at his place of employment on several occasions, and that on several of those occasions M-R- came and tried to get money from the petitioner; and that on one occasion the petitioner was forced to flee from the couple's apartment because M-R- threatened to shoot him.

In her November 1, 2006 letter, who claims to work for the apartment complex at which the petitioner and M-R- were living together, stated that in October 2005, M-R- slapped the petitioner, and that the petitioner ran into the leasing office to tell her about it. She also stated that the petitioner told her that he had been abused.

Finally, the petitioner also submitted an evaluation from , a counselor at the Houston Area Women's Center (HAWC), dated November 7, 2006. According to the petitioner came to HAWC on November 10, 2005 as a result of the abuse he had suffered. Ms. stated that the petitioner reported that M-R- had abused him by insulting him; failing to appreciate his thoughts and feelings; controlling the petitioner's appearance; lying; breaking promises; devaluing the petitioner's accomplishments and strengths; denying abuse; committing adultery; blaming the petitioner for her own abusive behavior; threatening to harm herself; physically abusing the petitioner; intimidating the petitioner with facial expressions; and by "making him do illegal things."

In his September 14, 2007 request for additional evidence, the director requested clarification of several issues with regard to the petitioner's claim of abuse. First, the director noted that the petitioner stated that he had called the police. The director stated that, although charges were not filed, a police report documenting the incident should be available. Second, the director noted that

the petitioner reported to the HAWC that M-R- made him do illegal things. The director requested further evidence regarding such illegal things. The director also requested further testimony regarding the alleged battery or extreme cruelty.

In response to the director's request for an explanation of what "illegal things" M-R- made the petitioner do, previous counsel stated that M-R- pressured the petitioner to speed while driving, as well as other illegal acts. With regard to the director's request for police reports, counsel stated that such reports were not available. In his October 8, 2007 statement, the petitioner stated that he had to move out of the marital residence, as M-R- had assured him that she was going to shoot him. He also stated that, on one occasion, he and M-R- were alone in a car, and he was driving. According to the petitioner, M-R- rolled a marijuana cigarette, lit it, and, against the petitioner's will, stuck it in his mouth. The petitioner stated that he knocked away the marijuana cigarette. In retaliation, M-R- hit the petitioner in the face, which nearly caused him to crash the car. On another occasion, when her car was "down," M-R- tried to convince the petitioner to use his car for a "drug run" she had arranged.

The petitioner also provided additional testimony regarding the abuse to which he was subjected. He described an incident during which he had no choice but to allow one of M-R-'s girlfriends join the couple's sexual relations. On other occasions, he caught M-R- having sexual relations with other men and women. He also stated that M-R- wrote bad checks and maxed out a credit card, and that she stole money from him.

Letters from the petitioner's brother and sister-in-law were also submitted in response to the director's request for additional evidence. **In his undated letter, the petitioner's** brother, stated that the couple lived with him and his wife until August 2004. He stated that the petitioner called him from his place of employment in September 2003, and told him that M-R- was there, and was insisting that the petitioner leave work in order to cash his check and give her money. He stated that he could hear M-R- in the background swearing very loudly. stated that after M-R- was released from jail, the abuse quadrupled, and that she hit the petitioner "anytime she felt like." After hearing that M-R- had slapped the petitioner in September 2005, he called M-R-'s mother for a family meeting, but she never came to the planned meeting. Two weeks later, he was talking to the petitioner on the phone, but M-R- knocked it out of his hands. He also testified that M-R- "trashed" the couple's apartment, and that the bill for the damage was sent to him.

In her October 20, 2007 letter, , the petitioner's sister-in-law, stated that M-R- is a very arrogant, bossy, and rude person who tries to physically attack people when she does not get her own way. She stated that she witnessed M-R- speaking very loudly and arrogantly to the petitioner over the phone, and that M-R- told her that she had slapped the petitioner. She also stated that she when she called the couple's apartment, she overheard M-R- making threats.

Upon review of the record of proceeding, the AAO finds that, considered in the aggregate, the testimony of the petitioner and the other affiants is sufficient to establish that the petitioner was

subjected to battery and extreme cruelty. The petitioner has submitted detailed testimony with regard to the abuse to which he was subjected by M-R-, and the AAO finds that testimony credible with respect to the abuse to which he was subjected. The AAO, therefore, withdraws that portion of the director's decision finding otherwise.

Good Faith Entry into Marriage

The third issue on appeal is whether the petitioner has established that he married M-R- in good faith. As a preliminary matter, the AAO first incorporates here its previous discussion of the inconsistencies of record, which undermines the credibility of the petitioner's testimony. The AAO also notes here the petitioner's failure to establish that he shared a joint residence with M-R-, and in particular, his inability to submit evidence from the period between December 2002 and November 2004 (the time period before he received notice of his upcoming permanent residency interview) in support of his alleged joint residence with M-R-.

With regard to his intentions upon entering into the marriage, the petitioner stated in his initial self-affidavit that he entered the United States on February 14, 2002, and that he met M-R- in a dollar store three days later. The petitioner stated that he was "blown away" by her physical appearance, and he approached her. They exchanged phone calls every day, and she showed the petitioner around Houston. Two weeks later, he moved to South Carolina and began his coursework. They remained in touch and, after the petitioner's school lost its ability to sponsor J-1 visas, he returned to Houston. According to the petitioner, after his return to Houston he and M-R- became soul mates. He stated that they went to dinners, movies, parties, bars, and family events together. The petitioner stated that, in December 2002, M-R- moved into the apartment he was sharing with his brother and sister-in-law. On December 16, they married.

The AAO acknowledges the four photographs and love letter submitted by the petitioner. However, those items do not compensate for the petitioner's testimony which, absent further, relevant evidence, is insufficient to establish that the petitioner entered into the marriage in good faith, because that testimony is too vague and generalized. General statements like those offered by the petitioner do not provide probative, detailed information regarding the couple's courtship. The petitioner has failed to offer a detailed account of the couple's courtship, their decision to marry, their engagement, or their early life together. Without such testimony, the AAO is unable to examine the petitioner's intentions upon entering into the marriage. The evidence of record fails to demonstrate that the petitioner entered into marriage with M-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that he and his wife shared a joint residence; and that he entered into marriage with his wife in good faith. However, the record indicates that the director did not issue a notice of intent to deny the petition (NOID) before he issued his decision. Although the record establishes that the petitioner is

ineligible for the benefit sought, the petition must be remanded, solely on procedural grounds, so that the petitioner has the opportunity to respond to a NOID. The petition must be remanded to the director for issuance of a NOID in compliance with the regulation in effect at 8 C.F.R. § 204.2(c)(3)(ii)[7] on the date this petition was filed, and the director must afford the petitioner the opportunity to submit a response. On remand, the director must address the issues before the AAO on appeal; i.e., whether the petitioner has established that he shared a joint residence with M-R-, and whether he married M-R- in good faith.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's June 18, 2008 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

[7] USCIS promulgated a rule on April 17, 2007 related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing of this petition on February 20, 2007.