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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE:

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Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

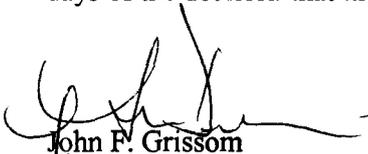
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

The director denied the petition on February 23, 2009, determining that the petitioner had not established that he had been battered or subjected to extreme cruelty by his United States citizen spouse and had not established that he entered into the marriage in good faith.

On appeal, counsel submits a brief.

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 in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further 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.

(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 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Syria who entered the United States on March 1, 2007 on a K-1 fiancé visa.

The petitioner married R-S-<sup>1</sup> on March 30, 2007, in the State of California. The petitioner stated on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that the couple resided together from March 1, 2007 to May 9, 2007. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner on or about April 25, 2007. The petitioner filed the instant Form I-360, on August 9, 2007. The director issued a request for further evidence (RFE) on July 24, 2008. Upon review of the record, including the response to the RFE, the director denied the petition on February 23, 2009. Counsel submits a timely appeal.

*Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim that his former spouse subjected him to extreme cruelty<sup>2</sup> during their marriage:

- The petitioner's statement attached to the Form I-360 dated June 13, 2007;
- The petitioner's October 16, 2008 statement submitted in response to the director's RFE; and,
- A statement by [REDACTED] dated June 4, 2007;

In the June 13, 2007 personal statement attached to the Form I-360, the petitioner stated that after his former spouse filed the application for him to become a lawful permanent resident she changed. The petitioner stated that his former spouse became very argumentative and began to threaten to have him deported if he did not agree to pay her money in the amount of \$1,500 for a 20-month period. The petitioner noted that when he told his former spouse that he would not pay the money she told him to leave and he left her home in May 2007. The petitioner also indicated that when he left the house, R-S- told him that if he did not pay the requested money, she would have him deported and that she would have a "black mark" put against his name so he could not return to the United States.

In the petitioner's second personal statement, dated October 16, 2008, the petitioner stated: that as soon as R-S- filed the petition for his green card, "she began to be very forceful with [him];" that she started pressuring him to start work even before he received his work authorization; that every day she harassed him and that they would get into verbal arguments and she would use bad words in English and Armenian; that she told him that either he needed to start working and help her out or that he had to pay \$1,500 for a 20-month period; and that if he "did not comply with her request that she would call Immigration and tell them that [he] entered into the marriage for the wrong reasons." The petitioner further indicated that R-S- took away gifts she had given him and destroyed pictures of their engagement. The petitioner stated that after a month of arguing, he returned one day and she had changed the locks and he decided it was best if he left for his own health. The petitioner noted that while leaving from the home, R-S- told him again that if he did not pay her the requested money, she would have him deported, and a "black mark" put against his name so that he could not return to the

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<sup>1</sup> Initials are used instead of the complete name to protect the individual's identity.

<sup>2</sup> The petitioner does not claim that he was subjected to physical abuse, but only that his former spouse subjected him to extreme cruelty.

United States.

In the statement of [REDACTED] dated June 4, 2007, [REDACTED] indicated that while visiting the United States she saw the petitioner and R-S- about four times. [REDACTED] also indicated that on one of the occasions in early May R-S- told her that she had threatened the petitioner that if he did not pay \$1,500 for 20 months she would not complete his immigration paperwork.

On appeal, counsel asserts that the petitioner endured two months of torment and psychological abuse and that this abuse rises to the level of extreme cruelty. Counsel asserts that United States Citizenship and Immigration Services (USCIS) should not condone the acts of extorting money as “not an unreasonable amount of money to assist with household expenses” as the director had found.

Upon review of the totality of the record, the AAO affirms the director’s determination that the petitioner did not establish the requisite battery or extreme cruelty. The petitioner provided only general conclusory statements regarding R-S- pressuring him to start work, harassing him, and engaging in verbal arguments. The petitioner’s chief complaint against R-S- revolves around her request for money. The circumstances surrounding R-S-’s requests for money are unclear. The petitioner has not provided any information regarding the conditions underlying the former couple’s two-month marriage and any discussion of their financial situation. The AAO acknowledges the petitioner’s claim that R-S- threatened to report him to immigration if he did not comply with her request for money, but the petitioner’s statement does not include sufficient probative information regarding R-S-’s requests for money and the indirect threats allegedly against him on those unspecified occasions. As described, R-S-’s actions, while may be unkind and inconsiderate, do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner and the general statement submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that R-S-’s non-physical behavior was accompanied by any coercive actions or threats of actual harm, or that her actions were aimed at insuring dominance or control over the petitioner. The record includes only general information regarding the claimed threats/requests and no probative evidence that the petitioner actually feared for his life or physical injury. The petitioner does not provide chronological detail and substantive testimony regarding the circumstances of the claimed cruel events in the two-month marriage. The record is without sufficient detail to determine that the petitioner was subjected to extreme cruelty perpetrated by his former spouse.

#### *Good Faith Entry into Marriage*

In the petitioner’s initial statement submitted with the Form I-360, the petitioner indicated that he first met R-S- in November 2005 when R-S- was visiting Beirut, Lebanon. He indicated that R-S- stayed in Lebanon, in Syria, and in United Arab Emirates for about 20 days and during that time they were always together. The petitioner stated that once R-S- returned to the United States, the former couple continued to communicate via telephone and that as their relationship grew, R-S- asked that the petitioner come to the United States on a K-1 fiancé visa. The petitioner noted that he obtained

the K-1 visa in September 2006 and upon entering the United States on March 1, 2007, R-S- met him at the airport and they immediately went to R-S-'s house and were then married on March 30, 2007.

In the petitioner's second statement, submitted in response to the director's RFE, the petitioner indicated that he contacted R-S- through a family friend in the beginning of 2005 and that the two had a "good connection" and would speak two to three times a day. The petitioner stated that R-S- decided to come to Lebanon and Syria in November 2005 so that the two could finally meet. The petitioner noted that during R-S-'s stay they were together every single day and that in Dubai they had an engagement party where his family was present. The petitioner also stated that he "was convinced that [he] had found [his] long-time companion. She was lovely, she spoke well, and our family friend said that she was a good girl." The petitioner noted that the United States Embassy in Damascus, Syria requested telephone bills to show that he and R-S- were in constant communication from the beginning of 2005.

In a June 4, 2007 statement [REDACTED] indicated that she met R-S- for the first time in November 2005 when she visited the petitioner's home and that she learned that the petitioner and R-S- were engaged. In an October 16, 2008 affidavit, [REDACTED] declared that the petitioner and R-S- lived together from the moment they were married to about May 2007 and that she accompanied the couple to dinners outside their home and that the couple seemed happy and in love. In an October 16, 2008 affidavit, [REDACTED] declared that the petitioner and R-S- lived together as husband and wife from the moment they married until about May 2007 and that when she called their home and spoke to R-S-, R-S- indicated the couple were married and that the marriage was going well.

The record also includes a copy of the first page of a two-page unsigned Washington Mutual Bank document showing that the petitioner was to be included in a joint payable upon death account with R-S-. The statement indicates the account was opened June 8, 2001 and was changed on July 6, 2007. The record also includes a transaction history of the account showing transactions from May 11, 2007 to July 6, 2007. The record further includes six photographs of the former couple at various unspecified events and locations.

On appeal, counsel for the petitioner asserts that the issuance of a K-1 visa to the petitioner is sufficient to establish the couple's courtship and *bona fide* intent to marry and that USCIS is estopped from re-litigating whether there was an actual courtship and *bona fide* intent to marry. Counsel also contends that the Washington Mutual Bank document was a precautionary measure taken by newlyweds to protect the petitioner and establishes the *bona fide* intent of the couple as husband and wife. Counsel also references the statements provided by [REDACTED] and [REDACTED] as statements that provide the experiences that these individuals shared with the couple.

Upon review of the totality of the record, the AAO does not find that the petitioner has established that he entered into the marriage in good faith. The petitioner's marriage certificate and Form I-130 filed by his former spouse confirm their marital relationship, but do not establish the petitioner's own

good faith in entering the marriage. The petitioner has provided general statements indicating that he communicated with R-S- via telephone and was with her when she visited Lebanon, Syria, and the United Arab Emirates in November 2005. The petitioner does not provide specific information regarding his intent in marrying his former spouse other than to state that they had a “good connection” and that he “was convinced that [he] had found [his] long-time companion. She was lovely, she spoke well, and our family friend said that she was a good girl.” These general statements do not substantiate that the petitioner’s intent upon marrying R-S- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the legitimacy of the marriage. The petitioner does not provide the necessary detailed information regarding the couple’s circumstances and interactions during their courtship and their subsequent marriage to demonstrate that the couple intended to establish a life together. The record is deficient in this regard.

The photographs show that the petitioner and his former spouse were together on one or two unidentified occasions, but this evidence alone fails to establish the requisite good faith marriage. The affidavits provided by [REDACTED], and [REDACTED] confirm the former couple’s joint residence but provide no probative information about the petitioner’s purported good faith in marrying his spouse. The declarants do not describe in detail any particular incidents where they witnessed the alleged *bona fides* of the marital relationship. Attending dinners with the couple on a few occasions outside the marital home and being told by the petitioner’s spouse that the couple was happy and the marriage was going well are insufficient to demonstrate the petitioner’s intent in entering the marriage.

The AAO has reviewed the Washington Mutual Bank document and notes that it is not a complete document, that the document does not include the signatures of either the petitioner or R-S-, and that it appears that the change in R-S-’s account to a “payable upon death” account was made after the couple separated in May 2007. Similarly, the statement of transactions is a statement of transactions that occurred after the couple separated. Thus, the document does not have any probative value in establishing that the petitioner entered into the marriage in good faith.

The AAO also finds that the approval of a Form I-129F, Petition for Alien Fiance(e), under section 214(d) of the Act is not *prima facie* evidence of the beneficiary’s good-faith entry into the subsequent marriage under section 204(a)(1)(A)(iii) of the Act. The statutory and regulatory framework for fiancé(e) petitions significantly differs from the requirement that self-petitioners under section 204(a)(1)(A)(iii) of the Act demonstrate that they “entered into” the marriage with the abusive U.S. citizen “in good faith.” The U.S. citizen petitioner bears the burden of proof in fiancé(e) cases to establish prospectively that the petitioner and beneficiary intend to and are able and willing to enter a valid marriage. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). The corresponding regulation does not, however, define what constitutes a “*bona fide* intention to marry” under section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). In contrast, for self-petitions under section 204(a)(1)(A)(iii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith and the regulation specifically defines the term “good faith marriage” and what types of evidence will suffice to meet that eligibility criterion. 8 C.F.R.

§§ 204.2(c)(1)(ix), (c)(2)(vii). Hence, the fact that a self-petitioner was the beneficiary of an approved Form I-129F filed by his or her spouse will not establish that the alien actually entered into the marriage in good faith.

Moreover, while evidence submitted with a Form I-129F petition filed on the alien's behalf may be relevant to a determination of the alien's good faith entry into the subsequent marriage, reliance on such evidence alone is unwarranted. In such instances, the U.S. citizen petitioner would have borne the burden of proof in the fiancé(e) case and reliance on the abusive spouse's representations of the alien's intentions at the time of their engagement is of little probative value.

The AAO also observes that the record lacks any independent documentary evidence suggested by the regulation including: proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; detailed testimony or other evidence regarding courtship, the wedding ceremony, the shared residence, and experiences; or other types of readily available evidence such as police, medical, or court documents providing information about the relationship. The AAO finds that while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony and documents submitted on his behalf, as determined above, also fail to support a finding that he entered into his marriage in good faith. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that he entered into the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Good Moral Character*

Beyond the decision of the director, the AAO finds that the record does not include sufficient evidence to establish that the petitioner is a person of 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. Although the record includes a police clearance from Syria, the petitioner has not provided an affidavit that he is a person of good moral character and the record does not include local police clearances or state-issued criminal background checks. For this additional reason, the petition will not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.