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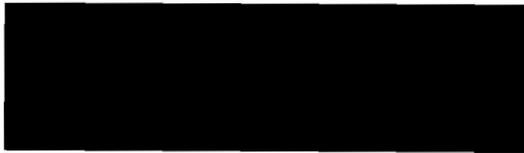
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090

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U.S. Citizenship  
and Immigration  
Services

139



FILE: [REDACTED]  
EAC 07 212 50502

Office: VERMONT SERVICE CENTER

Date: JUN 04 2009

IN RE: Petitioner: [REDACTED]

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:

SELF-REPRESENTED

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 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 director denied the petition on July 16, 2008, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty by his spouse and that he had not established that he had entered into the marriage in good faith.

On appeal, the petitioner submits a statement and two letters.

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

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

taken place during the self-petitioner's marriage to the abuser.

\* \* \*

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

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

*Evidence for a spousal self-petition –*

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

\* \* \*

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or

court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a citizen of India who entered the United States on August 9, 1999 on an F-1 student visa to attend Arizona State University. On December 8, 2000, the petitioner married B-E-,<sup>1</sup> a United States citizen, in the State of Nevada. The petitioner's spouse filed a Form I-130, Petition for Alien Relative on his behalf on January 23, 2001. The petitioner filed a Form I-485, Petition to Register Permanent Residence or Adjust Status, on the same date. The Form I-485 petition was denied on August 22, 2007 upon a determination that the petitioner in this matter had entered into the marriage for the purpose of evading immigration laws. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, which is the subject of this appeal on July 13, 2007. The director issued a Notice of Intent to Deny (NOID) the petition on May 1, 2008, informing the petitioner that the evidence submitted to show that he had been subjected to battery or extreme cruelty was deficient, and requesting documentation verifying that the petitioner married B-E- in good faith. The petitioner provided a response. Upon review of the evidence submitted, the director denied the petition on July 16, 2008 and the petitioner timely appealed.

### *Abuse*

In the petitioner's June 25, 2007, personal statement, the petitioner stated: that he sent B-E- money when she needed it but she started to become greedy and would make empty promises about returning to Phoenix where he lived; after a while when he would call her house in Michigan, a man would answer and he was told that the man was just a friend; she finally came to Phoenix but after a while, had to leave to help her son in Michigan and again asked for money; she made a large withdrawal from their joint checking account which he was initially unaware of; when she returned to Michigan, a man would answer the phone at her house and eventually he learned the man was her boyfriend; and the boyfriend told him that if the petitioner kept calling B-E-, they would send the petitioner back to India. In a separate letter, also dated June 25, 2007, the petitioner claims that he was "subjected to the most horrific psychological abuse imaginable," and as a result his self esteem was shattered; that B-E- tried to destroy almost all the evidence of their marriage; that she "adopted the attitude and ego of being a US Citizen and started humiliating, abusing and harassing [him];" that by March 2003 B-E- would be away from home two or three nights a week; that the petitioner had to bring her food and drinks of her choice, had to pay all the bills, and she put conditions on their intimate relations; that in April 2003, he and B-E- had heated arguments regarding her late nights with unknown persons; and on one occasion she pushed the petitioner out of the home and he called a mutual friend to intervene. The petitioner added: that in May 2003, B-E- asked him for a large amount of money "to let [him] off in the marriage relationship;" that by this time it "became clear that B-E- was humiliating [him] and torturing [him] to the extent to make [him] mad;" that during the course of three years B-E- had unrelentingly abused him

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<sup>1</sup> Name withheld to protect the individual's identity.

psychologically by not allowing him to speak in front of her, and that she used her US citizenship to threaten to get him deported if he did anything against her.

The petitioner provided letters from [REDACTED] his mother, and [REDACTED] who reference, B-E-'s behavior but do not provide any details of any abusive actions.

In response to the director's May 1, 2008 NOID, the petitioner provided his May 28, 2008 statement. The petitioner reiterated that B-E- stayed away from home two or three nights a week, that he had to bring her food and drinks, had to pay the bills, and that she put conditions on their intimate relations. The petitioner added that B-E- never hurt him physically but that B-E- called him bad names in the presence of their friends and that there was a lot of emotional and mental injuries to him.

The petitioner also provided a second statement from his mother that did not provide any information regarding any abusive actions by B-E-. The petitioner further provided an undated letter signed by [REDACTED] who indicated that she met the petitioner when he was working at a convenience store where she was a customer. [REDACTED] noted: that she heard B-E- yelling at the petitioner; that she saw B-E- throw something at the petitioner over the counter and that the petitioner was embarrassed; and that B-E- was always rude, would make rude comments to the petitioner in front of the customers, seemed controlling, and seemed to throw tantrums when she was angry.

The record also includes a psychiatric evaluation dated August 7, 2008 signed by [REDACTED] who noted that the petitioner had been feeling anxious and not sleeping and had poor memory. Ms. [REDACTED] also noted that the petitioner stated that his wife had left him eight months ago, that his wife left him for another guy, and that his wife was mean to him after she left. [REDACTED] prescribed medication.

Based on the information in the record, the director denied the petition finding inconsistencies in the petitioner's testimony regarding the time he resided with B-E- and finding that the petitioner had not provided evidence that he had been subjected to battery or extreme cruelty perpetrated by B-E-.

On appeal, the petitioner provided a statement. The petitioner stated: that in India if one's wife spent nights out of her home it is considered a great sin and since he experienced these circumstances it had a negative impact on his health, mental status, and his social life was ruined; that he had a child with another woman during the marriage so when he was asked if he had a child with B-E- by [REDACTED] and by U.S. Citizenship and Immigration Services (USCIS), he told said no; that B-E- cheated on him first; that she never paid any expenses for their daily life; that she was mean to him calling him names in front of friends and family; that she threatened to have him deported or jailed if he did not comply with her demands or did anything against her; and that he was scared. The petitioner noted that B-E- was in and out of his life so often and that it is hard to remember dates and he has provided the dates to the best of his memory and he has not attempted to mislead United States Citizenship and Immigration Services (USCIS).

The petitioner also submits a letter from [REDACTED] who clarifies her earlier letter by indicating that she had stated that she knew the petitioner for a “few” years and that more specifically she met the petitioner in late 2001 and that they have been acquainted since that time. The petitioner also submits a letter from [REDACTED] who states that he used to live in the neighborhood of the couple in the United States and was in India when B-E- visited the petitioner’s native place in India. [REDACTED] states: “[i]t’s an extreme case of woman cruelty ever been exhibited by any civilized citizen of United States. In other words it will not be wrong to suggest the US Department of Justice to punish her according to the land of the law.”

The AAO has reviewed the petitioner’s statements, the statements of his friends, his mother, and his spiritual advisor and does not find any evidence that the petitioner is claiming that he was subjected to battery. Rather, the petitioner contends that B-E-’s actions of leaving him, of residing with another man, of staying out all night, of calling him names, and threatening him constitutes extreme cruelty. The AAO disagrees. The petitioner in this matter has not provided details of specific incidents wherein he was subjected to acts similar to those 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 AAO notes the petitioner’s claim that B-E- and her boyfriend threatened him with deportation; however, the petitioner’s statement is general and lacks sufficient detail to subject the statement to proper examination. The AAO also observes that any threats made by the petitioner’s spouse’s boyfriend are not relevant to this matter. The record does not include evidence that the petitioner’s spouse instigated or was otherwise the proximate cause of any of her boyfriend’s threats. Both the statute and the regulation require that the abuse be perpetrated against the petitioner by his or her spouse, not a third party. *See* Section 204(a)(1)(A)(iii)(I)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb), 8 C.F.R. § 204(c)(1)(vi). In addition, the petitioner’s general references to his spouse becoming greedy and withdrawing a large amount of money from their bank account are not sufficiently detailed to conclude that the petitioner was subjected to some form of financial or economic abuse.

The AAO has reviewed the report prepared by [REDACTED] and finds that [REDACTED] did not specifically connect the petitioner’s mental health condition to acts perpetrated by B-E- that constitute extreme cruelty. Behavior, including abandonment, infidelity, and the name calling as generally described by the petitioner do not constitute extreme cruelty.

The AAO has reviewed the statements of [REDACTED] and finds that she also does not detail specific acts or incidents that suggest that the petitioner was subjected to extreme cruelty. Being rude and embarrassing your spouse are not acts that constitute extreme cruelty for the purposes of VAWA petitions. [REDACTED] indication that on one occasion while she was in the convenience store where the petitioner worked she saw B-E- throw something across the counter at the petitioner is not sufficiently detailed to constitute any sort of battery. Moreover the incident does not appear to have involved the authorities or others to subdue B-E-. The incident described, as well as Ms. [REDACTED] opinion regarding the actions of B-E-, is not substantiated with chronological and specific details which lessen the probative value of the statements.

The petitioner in this matter has provided general statements that in and of themselves do not establish credibility and are sufficiently vague as to not lend themselves to evaluations regarding credibility. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty. The AAO declines to accept generic information with little chronological timeline and inherent inconsistencies to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter, he has failed to do so.

*Good Faith Marriage*

In the petitioner's June 25, 2007 statement, the petitioner stated: that the first time he saw B-E- was in Michigan when he was visiting friends there; that it was love at first sight; that they start dating each other and both fell in love with the other; that "[i]t was that golden moment when we decided to live the life together with each other;" that they were so blind in love that they decided to marry right away and went to Las Vegas to do so; that he married B-E- on December 12, 2000; and that his marriage was an arranged love marriage according to laws prevailing in the State of Nevada. The petitioner stated further: that B-E- told him she wanted to return to Michigan to gather her things and see her kids and to come and be with him once he had a job and a place for them to live; that after speaking with an attorney B-E- agreed to file a Form I-130 on his behalf; that B-E- sent all the paperwork to California where he was staying with his relatives; that he left California for Phoenix, Arizona to find work and rented an apartment there; that he notified B-E- that she should come to Phoenix, but she did not want to because her son was ill; that she finally did come to Phoenix but left shortly after to take care of her ill son in Michigan; that he called her all the time and she always asked for money and would make empty promises about returning to Phoenix; and that she finally did come to Phoenix again but left again to help her son.

In a separate letter also dated June 25, 2007 the petitioner references the wedding in Las Vegas and reception in their home; photographs of the wedding and various other occasions; the opening of a joint bank account; a joint lease agreement dated April 1, 2001; B-E-'s trip to India on April 3, 2001 to meet his family; a house that he purchased in his name because B-E- had a bad credit history; a life insurance policy, health insurance policy, and automobile policies he had purchased; and household bills. The record includes photocopies of the referenced documents as well as the petitioner's Internal Revenue Service (IRS) Forms.

In the petitioner's May 28, 2008 statement he indicated that he and B-E- resided at: [REDACTED] in Phoenix from March 2001 to 2002; on [REDACTED] in Phoenix to March 2003; and on [REDACTED] in Scottsdale from 2003 to 2005. The petitioner also provided a letter from the American Family Life Insurance and indicated that the letter confirmed that he and B-E- had maintained the policy from May 2000 to May 2004. The petitioner stated that the joint bank

account, joint automobile policy, and life insurance policy were discontinued when B-E- disappeared.

The director noted inconsistencies in the petitioner's statements and in the documentation submitted. The director observed: that the petitioner had indicated that he had resided with B-E- until April 2006 but also stated that he had resided with B-E- until sometime in 2005 and provided further conflicting information by indicating that B-E- had returned to Michigan in March 2004; that the petitioner's indication that the couple held a reception at their home conflicted with the petitioner's statement that B-E- returned to Michigan after the wedding and that he went to California; and that the petitioner's statement that he notified B-E- once he had rented an apartment in Phoenix that she should come to Phoenix but she did not want to come because her son was ill is inconsistent with the first joint lease dated April 3, 2001, one day prior to B-E-'s departure to India on April 4, 2001 as noted in her passport.<sup>2</sup> The director also observed that the record included only one withdrawal made by B-E- on the joint bank account, the withdrawal the petitioner indicated he was not aware of and that the account was closed after her disappearance; that the petitioner purchased a home in April 2004 and identified himself as a single unmarried man on the deed; that the letter from American Family Life Insurance indicates that B-E- was insured from May 16, 2000 to May 13, 2004 and there is no indication that the petitioner was listed as a beneficiary on the policy; that although the petitioner claimed that he was taking care of B-E- and her children, no children were listed on the medical insurance policy; and that the petitioner admitted he had a relationship with another woman and a child from that relationship. The director also found that the petitioner's IRS Forms for 2005, 2006, and 2007 showed that he was married filing separately, an indication that there was no commingling of funds.

The director concluded from the inconsistent statements provided that the petitioner had not established that he had entered into the marriage in good faith and determined that his marriage to B-E- was entered into for the sole purpose of obtaining an immigration benefit.

On appeal, the petitioner stated: that immediately after their honeymoon in Las Vegas B-E- went to Michigan to get her things and "[a]fterward she eventually joined [him] in Phoenix" and "[w]e stayed for a few weeks in the home of a family friend before signing the apartment lease;" in April of 2001 B-E- went to India and in July 2001 upon her return from India they lived in Phoenix for two months until she returned to Michigan to care for her son; that he added B-E-'s name to his American Family Life Insurance policy after they were married; and that he did not marry B-E- for immigration benefits but loved her all the time. The petitioner contends that part of the reason for the confusion and inconsistencies is that his case has been going on for eight years and it is hard to remember dates of events when someone is suffering from poor mental health and poor memory.

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<sup>2</sup> The AAO clarifies that the inconsistency is in the petitioner's statement that B-E- wanted to stay with her son in Michigan and that is why she refused to come to Phoenix but was able to go to India despite the claimed need to take care of her son.

The AAO has reviewed the petitioner's statement on appeal, as well as his previous statements, statements of friends and family, and the documentary evidence. In addition to the inconsistencies pointed out by the director, the AAO observes that the petitioner indicated that the couple continued to live at an address in Scottsdale, Arizona after the petitioner had purchased a home on [REDACTED] in Chandler, Arizona. Further, the petitioner's automobile policy includes a 22-year-old female on the policy as well as the petitioner and B-E-. The record in this matter includes inconsistent statements regarding when the couple were together, includes general references to their life together, and little information on the intent of the petitioner in marrying B-E. The AAO observes that the petitioner entered the United States on August 9, 1999 on a F-1 student visa, traveled to Michigan during the school year, met B-E- on some undisclosed date, and married her on December 8, 2000 in Nevada. The record does not include detailed probative information on the courtship and subsequent interactions of the petitioner and B-E-. The record does not include consistent, detailed statements from the petitioner supporting his claim that he married B-E- in good faith and with the intent to make a life together. The evidence in the record regarding B-E-'s apparent reluctance to join the petitioner in establishing a joint residence further undermines the *bona fides* of the marriage. The general information regarding the petitioner's intent upon entering the marriage, the lack of information regarding the courtship, the inconsistencies regarding their time together subsequent to the marriage, and the lack of complete information regarding the petitioner's circumstances at his various addresses, his relationship with the mother of his child, and information regarding a third individual on his automobile policy, when reviewed together support a conclusion that the petitioner did not enter into the marriage in good faith. The AAO concurs with the director's determination that the petitioner did not establish that he entered into the marriage in good faith.

The director referenced that the petitioner is subject to section 204(c) of the Act, and our independent review of the record in this matter indicates that the petitioner's marriage to B-E- was entered into for the purpose of evading the immigration laws. Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws[.]

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states:

*Fraudulent marriage prohibition.* Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of

whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990). In this matter, the AAO concurs with the director and has independently determined that the record does not include sufficient evidence to establish that the petitioner entered into the marriage in good faith. The AAO has reviewed the timing of the petitioner's marriage and the inconsistent statements of the petitioner, as well as the lack of clarifying information in the record as referenced above, and finds that the petitioner entered into the marriage in order to obtain an immigration benefit; thus section 204(c) of the Act mandates the denial of the petition.

The petition will be denied for the 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.

**ORDER:** The appeal is dismissed.