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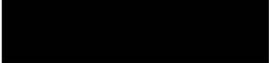


U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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

By



FILE: 
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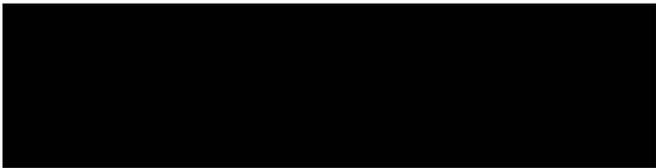
Office: VERMONT SERVICE CENTER

Date: **JUN 04 2009**

IN RE: Petitioner: 

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

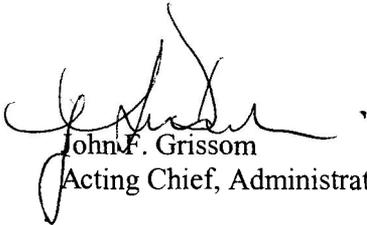
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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



John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition 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 because the petitioner did not establish that he resided with his wife, married her in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a letter, a new affidavit from the petitioner, and a copy of the doctor's letter previously submitted.

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

(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 further explicated 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.

* * *

(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.

* * *

(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 case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Yugoslavia who was admitted into the United States on June 2, 2003 as a nonimmigrant K-1 fiancé. On July 8, 2003, the petitioner married E-K-¹, a U.S. citizen, in Elmsford, New York. On November 5, 2003, the petitioner filed the Form I-485, Application to Register Permanent Resident or Adjust Status, which was denied on July 21, 2006, due to abandonment.

The petitioner filed the instant Form I-360 on July 21, 2006. On February 8, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite joint residency, good-faith entry into the marriage, battery or extreme cruelty, and good moral character. The petitioner, through counsel, timely responded to the NOID with additional evidence. On June 13, 2007, the director denied the petition because the petitioner did not establish the requisite joint residency, good-faith entry into the marriage, and battery or extreme cruelty. Counsel timely appealed.

On appeal, counsel states that the petitioner did not submit any bank statements because he and his wife did not have a joint bank account and that the petitioner “could not file for taxes because his wife refused to give him her social security number.” Counsel reiterates the petitioner’s claims that on March 8, 2004, his wife threw him out of the house, his in-laws will not write affidavits against their daughter, his wife was having an affair with another man, and she verbally abused him.

Joint Residence

The record contains the following evidence relevant to the petitioner’s claim that he resided with his wife:

- The petitioner’s affidavits dated June 29, 2006; April 6, 2007; and August 7, 2007 (the latter submitted on appeal);
- The petitioner’s Form G-325A, Biographic Information, on which he stated that he resided at [REDACTED] in Yonkers, New York from June 2003 until he signed the form on October 6, 2003;
- Two affidavits from [REDACTED] dated June 29, 2006 and April 5, 2007, respectively;
- Two affidavits from [REDACTED] dated June 29, 2006 and April 5, 2007, respectively;

¹ Name withheld to protect individual’s identity.

- Two affidavits from [REDACTED] dated June 29, 2006 and April 5, 2007, respectively;
- Two affidavits from [REDACTED] dated June 29, 2006 and April 5, 2007, respectively;
- A report, dated July 11, 2006, from [REDACTED] of the Saint Vincent Catholic Medical Centers; and
- Copies of the petitioner's federal income tax returns for 2004 and 2005, reflecting his filing status as "Single."

On the Form I-360, the petitioner states that he was married on June 26, 2003, which conflicts with his actual date of marriage of July 8, 2003, as reflected on his marriage certificate. Also on the Form I-360, the petitioner states that he resided with his wife from June 2003 until March 2004.

In his June 29, 2006 affidavit, the petitioner states that he came to the United States on or about June 2, 2003 and resided at his cousin's house for three months. The petitioner states that he and E-K- were officially married on June 26, 2003, and held their traditional wedding on or about September 6, 2003, after which they went on their honeymoon. The petitioner states that they stayed on their honeymoon until September 19, 2003. The petitioner goes on to explain the alleged abuse from his wife and states that on March 8, 2004, two days after he told his father-in-law that he thought E-K- was having an affair, his wife locked him out of the house, and he ended up staying at his uncle's house.

In his June 29, 2006 affidavit, [REDACTED] identifies himself as the petitioner's cousin and states that the petitioner had his wedding ceremony on or about September 6, 2003, and that on March 8, 2004, the petitioner called him after E-K- locked him out of the house.

The June 29, 2006 affidavits from [REDACTED], and [REDACTED] are all identical and are all very similar to [REDACTED] affidavit. Thus, the AAO must question whether the statements expressed in these affidavits are the authors' own.

In her July 11, 2006 report, [REDACTED] states that the petitioner indicated that he was thrown out of his house by his wife on March 5, 2006.

In his February 8, 2007 NOID, the director pointed out the following discrepancies in the petitioner's testimony and in the information he provided on the petition: the petitioner indicated in his June 29, 2006 affidavit that when he went home on March 8, 2004, E-K- would not let him in the house, which conflicts with his statement to [REDACTED] that E-K- threw him out on March 5, 2006; the petitioner indicated on the petition that he resided with E-K- from June 2003 to March 2004, which conflicts with the information in his June 29, 2006 statement that he arrived in the United States on June 2, 2003 and resided with his cousin for three months; and the petitioner indicated on the petition that he and E-K- were married on June 26, 2003, which conflicts with the information on their marriage certificate reflecting that they were married on July 8, 2003. The director also found that: the affidavits show that the petitioner and E-K- were married, but they do not establish that he

resided with his wife, married her in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage; and that, although information on the petition indicates that the petitioner and E-K- were married in 2003, the petitioner filed his 2004 and 2005 income tax returns as single.

In his April 6, 2007 affidavit, the petitioner states that after he entered the United States on a K-1 visa, he stayed at his cousin's house for about three months. The petitioner states that he mistakenly stated his marriage date on the petition as June 26, 2003, because that is when the "solemnization" begins, which he erroneously believed as the official date of marriage. The petitioner also states that he and E-K- held their traditional religious wedding on or about September 6, 2003, and almost 250 people attended the reception, which cost around \$20,000. The petitioner states that he and E-K- started residing together after their September 6, 2003 traditional religious wedding, in accordance with Albanian tradition. The petitioner explains that he and E-K- lived on the first floor of his in-laws' two-story house, which has two different main entrances, and that his in-laws lived on the second floor. The petitioner states that his father-in-law paid for "everything" so that he and E-K- could save money to buy their own house. The petitioner states that he resided at his in-laws' home until E-K- locked him out on March 8, 2004, and consequently, he filed his 2004 and 2005 tax returns as single. The petitioner reiterates how he met E-K- and explains that matchmaking is very common in the Albanian community. The petitioner reiterates how they spent their honeymoon, and states that it was sad and disappointing. The petitioner goes on to explain the alleged abuse and states that he ultimately told E-K-'s father that he thought E-K- was having an affair, and about two days later, on March 8, 2004, he was locked out of his house. The petitioner explains that he called his uncle to pick him up, and the next day his uncle called his father-in-law, who told him that the petitioner should not return to his home. The petitioner states that his uncle picked up his belongings, and he moved into his cousin's home, where he has lived ever since.

In his April 5, 2007 affidavit, [REDACTED] states that the petitioner is his cousin and that E-K- is his goddaughter. [REDACTED] reiterates the information from his June 29, 2006 affidavit. [REDACTED] also states that on the day after the petitioner was locked out of his apartment at [REDACTED], in Yonkers, New York, he called the petitioner's father-in-law, who told him that the petitioner could not go back to E-K-, and that he had notified the petitioner's father of his decision.

In his April 5, 2007 affidavit, [REDACTED] who is [REDACTED]'s son, states that the petitioner is his cousin and that E-K- is his "god sister." [REDACTED] reiterates the information regarding the petitioner getting kicked out of the house he shared with E-K-.

In her April 5, 2007 affidavit, [REDACTED] states that the petitioner is her cousin and that E-K- is her "god sister." [REDACTED] reiterates the information discussed by [REDACTED] regarding the petitioner getting kicked out of the downstairs apartment of E-K-'s parents' house in Yonkers, New York.

In her April 5, 2007 affidavit [REDACTED] states that the petitioner is her cousin and that she and her family members attended the petitioner and E-K-'s wedding and wedding reception. [REDACTED]

reiterates the information regarding the petitioner getting kicked out of the home he shared with E-K-.

In his denial, the director states that the evidence of record is insufficient to establish that the petitioner resided with E-K-. In his August 7, 2007 affidavit submitted on appeal, the petitioner states that he and E-K- did not have any joint bank accounts, that he filed his income tax returns as single because he was unable to provide his accountant with his wife's social security number, and that his wife threw him out of the house on March 8, 2004, regardless of the discrepancy in his and [REDACTED] affidavits pertaining to the exact time it happened.

As noted above, on the Form I-360, the petitioner states that he resided with his wife from June 2003 until March 2004, and on the Form G-325A, he states that he resided at the [REDACTED] address in Yonkers, New York, which is his in-laws' address, from June 2003 until he signed the form on October 6, 2003. These claims conflict with his claim in his June 29, 2006 affidavit that he came to the United States on June 2, 2003 and stayed at his cousin's house for three months. The petitioner claims in his April 6, 2007 affidavit that he entered the United States on a K-1 visa and stayed at his cousin's house for about three months until he and E-K- held their traditional religious wedding on September 6, 2003, after which he and E-K- began residing together, in accordance with Albanian tradition. Also on the Form I-360, the petitioner states the last address at which he lived with E-K- as: [REDACTED] Bronx, New York, which conflicts with the petitioner's claim in his April 6, 2007 affidavit that he lived on the first floor of his in-laws' two-story house at [REDACTED] New York until he was locked out by his wife. In his April 5, 2007 affidavit, [REDACTED] also states that the petitioner was locked out of his apartment at [REDACTED] Yonkers, New York, and in her April 5, 2007 affidavit, [REDACTED] states that the petitioner was kicked out of the downstairs apartment of E-K-'s parents' house in Yonkers, New York. The petitioner does not explain the discrepancies between the last joint residence with his wife, as it is reflected on the petition - [REDACTED] Bronx, New York - and as it is reflected in his April 6, 2007 affidavit and in the April 5, 2007 affidavits of [REDACTED] and [REDACTED], Yonkers, New York. The petitioner also does not explain the discrepancies between the date he ceased living with his wife, as it is reflected in his testimony and in the testimony of his relatives - March 8, 2004 - and as it is reflected in the testimony of [REDACTED] - March 5, 2006. These inconsistent statements regarding the petitioner's last joint address with his wife detract from the credibility of his testimony and of the testimony submitted on his behalf.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the relevant evidence provides only affidavits from the petitioner and his relatives, and contains unresolved discrepancies regarding the petitioner's alleged residence with his wife. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In addition to the above listed documentation, the record contains copies of photographs and a DVD of

the petitioner and E-K-'s September 6, 2003 traditional wedding and wedding reception.

In his June 29, 2006 affidavit, the petitioner states that he met E-K- through his cousin, who is married to E-K-'s sister, and that his marriage to E-K- was an arranged marriage, which is a common practice in the Albanian community of Ulqin. The petitioner explains that he met E-K- and her family in Yugoslavia on July 13, 2002, after speaking with E-K- several times on the phone, and that one day after he had met her, he proposed marriage to her, which she accepted, and their parents were happy with their decision. The petitioner states that he came to the United States on June 2, 2003 and stayed at his cousin's house for three months, during which time he and E-K-, then his fiancée, went out numerous times and were happy. The petitioner states that he and E-K- were officially married on June 26, 2003, and were traditionally married on or about September 6, 2003, after which they went on their honeymoon. For the remainder of the affidavit, the petitioner describes how the marriage disintegrated after a couple of days on their honeymoon.

In his April 6, 2007 affidavit, the petitioner states that after he entered the United States on a K-1 visa, he stayed at his cousin's house for about three months. The petitioner states that he mistakenly stated his marriage date on the petition as June 26, 2003, because that is when the "solemnization" begins, and he erroneously believed that to be the official date of his marriage. The petitioner also states that he and E-K- held their traditional religious wedding on or about September 6, 2003, with almost 250 people in attendance at the reception, which cost around \$20,000. The petitioner states that he and E-K- started residing together after the September 6, 2003 traditional religious wedding, as required by Albanian tradition. The petitioner explains that he and E-K- lived on the first floor of his in-laws' two-story house, which has two different main entrances, and that his in-laws lived on the second floor. The petitioner states that his father-in-law paid for "everything" so that he and E-K- could save money to buy their own house. The petitioner states that he resided at his in-laws' house until E-K- locked him out on March 8, 2004, and consequently, he filed his 2004 and 2005 tax returns as single. The petitioner reiterates how he met E-K- and explains that matchmaking is very common in the Albanian community. The petitioner reiterates how they spent their honeymoon, and states that it was sad and disappointing. The petitioner goes on to describe the disintegration of the marriage and states that he later discovered his wife had been having an affair with a man of whom her parents disapproved, and thus they arranged for her to marry the petitioner.

In his June 29, 2006 affidavit, [REDACTED] states that the petitioner had his wedding ceremony on or about September 6, 2003. In his April 5, 2007 affidavit, [REDACTED] states that he and his family attended the petitioner and E-K-'s wedding, along with some 250 other people.

In his April 5, 2007 affidavit, [REDACTED] states that he attended the petitioner and E-K-'s church wedding and reception on September 6, 2003.

In her April 5, 2007 affidavit, [REDACTED] also states that she attended the petitioner and E-K-'s church wedding and reception on September 6, 2003.

In her April 5, 2007 affidavit, [REDACTED] states that she and her family members attended the petitioner and E-K-'s wedding and reception.

As discussed in the preceding section, the petitioner does not explain the discrepancies between the last joint residence with his wife, as its is reflected on the petition - [REDACTED] Bronx, New York - and as it is reflected in his April 6, 2007 affidavit and in the April 5, 2007 affidavits of Mr. [REDACTED] and [REDACTED], Yonkers, New York. Nor does the petitioner explain the discrepancies between the date he ceased living with his wife, as it is reflected in his testimony and in the testimony of his relatives - March 8, 2004 - and as it is reflected in the testimony of [REDACTED] - March 5, 2006. These inconsistent statements regarding the petitioner's last joint address with his wife detract from the credibility of his testimony and of the testimony submitted on his behalf.

In his affidavits, the petitioner claims that he and his wife lived together for approximately seven months before E-K- locked him out of her parents' house. On appeal, the petitioner states that he and E-K- had no joint bank account, and that he filed his 2004 and 2005 income tax returns as single because he did not know E-K-'s social security number.

Again, the petitioner is not required to submit preferred primary or secondary evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the record contains conflicting evidence regarding the petitioner's claimed joint residence with his wife. In addition, the wedding photographs and DVD confirm that the petitioner and E-K- were married and had a church wedding and wedding reception, but these documents alone do not establish the petitioner's good-faith entry into the marriage. The affidavits from the petitioner's relatives indicate that they were present at the petitioner's wedding; the affiants, however, provide no further details and do not describe any particular occasions, apart from E-K- locking the petitioner out of her parents' house, where they observed the petitioner interacting with his wife. The lack of probative detail and substantive information in the petitioner's testimony and the testimony submitted on his behalf regarding his decision to marry and his "arranged" marriage with E-K-, which allegedly disintegrated after two days on their honeymoon, significantly detracts from the credibility of his claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty.

In his denial, the director states that the petitioner's testimony regarding the events of the March 8, 2004 evening when his wife refused to let him in the house, conflicts with the information provided by [REDACTED] in his affidavit regarding the same evening. The director also states that Mr. [REDACTED] does not indicate that he was a witness to any of the claimed abuse, and that the affidavits from [REDACTED], and [REDACTED] do not indicate that they witnessed the

claimed abuse.

In his June 29, 2006 affidavit, the petitioner states that after a couple of days on their honeymoon, his wife told him that she did not love him anymore and wanted to return home, and threatened to have him deported back to Yugoslavia. The petitioner states that he called E-K-'s father to tell him that something was wrong between him and E-K-, that his father-in-law then spoke to E-K-, but, as their conversation was in English, he did not understand what was said. The petitioner states that after his wife finished talking to her father, she told him that she wanted to return home, and when he asked for an explanation, she suddenly changed her mind and told him that she loved him, wanted to stay on the honeymoon, and apologized for her earlier behavior. The petitioner states that they stayed on their honeymoon until September 19, 2003, and after they returned, he told his cousin to find out through his sister-in-law what was going on with E-K-. The petitioner states that his father-in-law called him to ask what was going on with his daughter, claiming that his daughter had not told him. The petitioner states that after a few days, his wife went back to work and returned home late every night, always at different hours. The petitioner explains that his feelings were hurt because his wife was avoiding him, and that he began to think that his wife had someone else in her life. The petitioner states that E-K- called him every night to tell him that she was going out with her friend and that she refused to be intimate with him, told him that she did not love him, and used vulgar language. The petitioner also states that his wife hit him, told him to shut up, and threatened to call the police to have him deported by telling them that he beat her. The petitioner explains that he was afraid of ending up in prison, as he did not know English and would not be able to defend himself. The petitioner states that his wife refused his suggestion to see a marriage counselor. The petitioner states that he told his father-in-law that his daughter was not being a wife to him, whereupon his father-in-law called E-K- several times and told her that she should try to make the marriage work. The petitioner states that one night when he arrived home from work at 11:00 p.m., his wife's father was there and asked him why he was late. The petitioner states that, even though his wife was arriving home after midnight almost every night, his father-in-law called the petitioner's uncle and told him that the petitioner was coming home late. The petitioner states that on March 8, 2004, two days after he told his father-in-law that he thought E-K- was having an affair, his wife locked him out of the house, and his uncle ended up taking him to his house. The petitioner explains that he later learned that his wife was having an affair, and that as soon as she locked him out of the house, she moved in with the other man with whom she had a baby. The petitioner explains that he fell into a deep depression, could not sleep, eat, or drink, and contemplated suicide, and that "every now and then" he has an appointment with his doctor.

In his April 6, 2007 affidavit, the petitioner states that he and E-K- started residing together after the September 6, 2003 traditional religious wedding, as required by Albanian tradition. The petitioner reiterates how they spent their honeymoon, and states that it was sad and disappointing. The petitioner states that when they returned home, E-K- started back to work and asked for lunch money everyday, which he did not understand, as she was working and keeping her salary. The petitioner also states that E-K- went out at night and did not return until after midnight, and that she yelled at him when he asked where she had been. The petitioner states that E-K- refused to go out with him, picked fights, used foul language, and insulted his family. The petitioner states that he had to sleep at his uncle's house one

night because she locked him out, humiliating him. The petitioner states that E-K- hit him “usually with her shoes” and threatened to call the cops and have him put in jail. The petitioner states that they slept separately, though one night she became affectionate to him and made love with him. The petitioner states that he told E-K-’s father that he thought E-K- was having an affair, and about two days later, on March 8, 2004, he was locked out of his house. The petitioner explains that he called his uncle to pick him up, and the next day his uncle called his father-in-law, who told him that the petitioner should not return to his home. The petitioner states that his uncle picked up his belongings, and he moved into his cousin’s home, where he has lived ever since. The petitioner reiterates that he later discovered that his wife had been having an affair with a man of whom her parents disapproved, and thus they arranged for her to marry the petitioner. The petitioner states that he became depressed, and his uncle recommended that he see a doctor.

On appeal, the petitioner states that no one other than his in-laws knew of his marital problems until he was locked out of their house, and that his in-laws are not willing to provide affidavits against their own daughter. The petitioner also states that E-K-’s sister is married to his cousin, which made it harder for him to go to the police. The petitioner states he learned later that during their marriage his wife was having an affair with another man, and that after she locked the petitioner out of house, she moved in with the other man and had his baby. The petitioner explains that his wife’s affair with the other man started before the petitioner’s engagement to her, and that her family was against the relationship and thus arranged her marriage to the petitioner. The petitioner states that his uncle recommended Dr. whom he sees “now and then.”

In her July 11, 2006 report, [REDACTED] states that the petitioner is currently her patient and that she sees him monthly for medication management and supportive therapy. [REDACTED] states that the petitioner came to be evaluated for symptoms of depression and anxiety, which the petitioner stated began when he started having problems with his wife and intensified after she threw him out on March 5, 2006. [REDACTED] also states that the petitioner told her the following: he met E-K- in June 2003 and married her in September 2003; after the marriage, E-K- did not pay any attention to him and asked him for money all the time; E-K- abused him emotionally and physically by pushing and hitting him; E-K- continually asked him to leave and threatened to go to “Immigration”; E-K- did not spend any time with him or go anywhere with him and her family gave him the cold shoulder; he discussed the situation with his uncle and decided to leave; he found out that E-K- had been in a relationship that her family did not approve of and her marriage to him was used as a “cover”; and E-K- maintained the relationship with her lover with whom she has a son. [REDACTED] diagnoses the petitioner with major depressive disorder, post traumatic stress disorder and anxiety disorder, and states that the petitioner is being treated with a combination of supportive therapy and an anti-depressant/anti-anxiety medication.

In his June 29, 2006 affidavit, [REDACTED] states that he noticed several changes in the petitioner after his marriage, including sadness, insecurity, rejection of social contact, negative expectations for the future, pessimism, unwillingness to do things, and lost weight. [REDACTED] also states that, after inquiring several times, the petitioner told him that his wife abused him and refused to have sex with him. [REDACTED] states that on March 8, 2004, the petitioner called him after his wife locked him out

of his house, and that he gave shelter to the petitioner for one night and then took him to his cousin's house. [REDACTED] explains that the petitioner was very depressed and told him several times that "he would commit suicide," and states that he referred the petitioner to a psychologist.

In his April 5, 2007 affidavit, [REDACTED] reiterates the information from his June 29, 2006 affidavit. [REDACTED] also states that, on the day after the petitioner was locked out of his apartment at [REDACTED] in Yonkers, New York, [REDACTED] called the petitioner's father-in-law, who told him that the petitioner could not go back to E-K-, and that he had notified the petitioner's father of his decision.

In his April 5, 2007 affidavit, [REDACTED] reiterates the information regarding the petitioner getting kicked out of the house he shared with E-K-, the petitioner seeking professional therapy for anxiety and depression, and E-K- having a child with another man.

In her April 5, 2007 affidavit, [REDACTED] reiterates the information discussed by [REDACTED] regarding the petitioner getting kicked out of the downstairs apartment of E-K-'s parents' house in Yonkers, New York. [REDACTED] also states that the petitioner told her that "other members" of E-K-'s family tried to convince him that he was the father of E-K-'s baby.

In her April 5, 2007 affidavit, [REDACTED] reiterates the information regarding the petitioner getting kicked out of the home he shared with E-K-. [REDACTED] also states that E-K-'s father still does not speak to her and her father, [REDACTED] for having counseled the petitioner in his time of grief.

In this case, we do not find the petitioner's evidence to be sufficient to meet the petitioner's burden of proof. The petitioner submits insufficient evidence that his wife subjected him to battery. The alleged incidents of the petitioner's wife hitting him "usually with her shoes" are equivocal, as the petitioner does not mention his wife hitting him with her shoes in his June 26, 2006 affidavit or on appeal. Moreover, in his June 29, 2006 affidavit, the petitioner states that his wife refused to have any physical contact with him, while in his April 6, 2007 affidavit, the petitioner states that one night she suddenly became affectionate and made love with him. These inconsistencies diminish the evidentiary value of the petitioner's testimony. It is additionally noted that, in her April 5, 2007 affidavit, [REDACTED] states that the petitioner told her that "other members" of E-K-'s family tried to convince him that he was the father of E-K-'s baby, which the petitioner himself does not discuss in any of his affidavits. This inconsistency detracts from the probative value of [REDACTED] testimony.

[REDACTED] states in her July 11, 2006 report that the petitioner is currently her patient whom she sees monthly, though she does not provide any details specific to the petitioner's "medication management and supportive therapy" sessions, such as the length and dates of such sessions. It is also noted that, on appeal the petitioner does not indicate that he has monthly therapy sessions with Dr. [REDACTED] stating that he sees [REDACTED] only "now and then." Moreover, although [REDACTED] diagnoses the petitioner with major depressive disorder, post traumatic stress disorder, and anxiety disorder, and states further that the petitioner is being treated with a combination of supportive therapy and an

anti-depressant/anti-anxiety medication, she does not provide substantive, probative information indicating that the behavior of the petitioner's wife included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. In addition, testimony that the petitioner discussed his wife's behavior with his uncle and finally decided to leave, conflicts with petitioner's testimony and with the testimony of [REDACTED] and [REDACTED], that the petitioner was kicked out and/or locked out of his in-laws' house. Also, as discussed above, [REDACTED] states that the petitioner reported the date his wife threw him out as March 5, 2006, which conflicts with March 8, 2004 date claimed by the petitioner and his relatives in their testimony. These inconsistencies and deficiencies diminish the evidentiary value of the [REDACTED] testimony.

The petitioner's allegation of extreme cruelty is based upon the claims that his spouse refused to go out with him or be intimate with him, told him that she did not love him, used vulgar language, threatened to call the police to have him deported by telling them that he beat her, picked fights, insulted his family, had an affair with another man, and ultimately locked him out of the house. As described, the actions by the petitioner's wife 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 conflicting testimony made by the petitioner and on the petitioner's behalf fails to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that his wife's non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner.

The petitioner has not demonstrated that he resided with his wife, entered into their marriage in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.