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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

[REDACTED]
EAC 06 134 50494

Office: VERMONT SERVICE CENTER

Date: JUN 04 2009

IN RE:

Petitioner: [REDACTED]

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

ON BEHALF OF PETITIONER:

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 affirmed his decision in a subsequent motion to reopen. 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 married his wife in good faith and that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a letter, additional evidence and copies of documents 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:

(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.

* * *

(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 Pakistan who was admitted into the United States on November 29, 1998 as a B-1

nonimmigrant visitor for business. On May 19, 1999, the petitioner married S-S-¹, a U.S. citizen, in Hempstead, New York. On March 19, 2001, S-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed Form I-485, Application to Register Permanent Resident or Adjust Status. On January 10, 2002, the director denied both the I-130 petition and the I-485 application due to abandonment, pursuant to 8 C.F.R. § 103.2.

The petitioner filed the first Form I-360 on February 19, 2002. On July 26, 2002, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite qualifying relationship, good moral character, joint residency, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner responded with additional evidence. On October 3, 2002, the director issued a second RFE of, *inter alia*, the requisite battery or extreme cruelty. On August 11, 2003, the director denied the petition because the petitioner did not establish that he married his wife in good faith and that his wife subjected him to battery or extreme cruelty during their marriage. A subsequent appeal was rejected by the AAO as untimely filed.

The petitioner filed the second Form I-360 on June 28, 2004. On July 7, 2004, the director issued an RFE of, *inter alia*, the requisite good-faith entry into the marriage and good moral character. The petitioner, through prior counsel, requested additional time to respond. On September 21, 2005, the director denied the petition because the petitioner did not establish that he married his wife in good faith and that his wife subjected him to battery or extreme cruelty during their marriage. On January 11, 2006, the director rejected an appeal filed on November 8, 2005, as untimely filed. On January 19, 2006, the petitioner, through prior counsel, filed a motion to reopen. On March 21, 2006, the director accepted the appeal as a motion to reopen and affirmed his September 21, 2005 decision.

The petitioner filed the instant Form I-360 on March 31, 2006. On October 12, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite good moral character, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner, through prior counsel, timely responded to the NOID with additional evidence. On March 21, 2007, the director denied the petition because the petitioner did not establish that he married his wife in good faith and that his wife subjected him to battery or extreme cruelty during their marriage. On May 7, 2007, the petitioner filed an appeal. On June 21, 2007, the director accepted the untimely filed appeal as a motion to reopen, and affirmed his March 21, 2007 decision. The petitioner timely appealed.

On appeal, the petitioner claims that he married S-S- in good faith and that she treated him cruelly. As supporting documentation, the petitioner submits: a personal statement dated July 18, 2007; three letters, all dated July 18, 2007, from [REDACTED], and [REDACTED].

¹ Name withheld to protect individual's identity.

² The City of Jersey City at its website at <http://www.njjcpd.org/> reported on April 16, 2008 that the Jersey City Police Department's Special Investigations Unit, in conjunction with the federal Drug Enforcement Administration and the New Jersey Division of Criminal Justice Medicaid Fraud Unit, arrested [REDACTED] charging him with illegal drug distribution and Medicaid fraud.

a new lease; and copies of documents previously submitted. The petitioner's claims and the evidence submitted on appeal fail to establish that he married his wife in good faith and that his wife subjected him to battery or extreme cruelty during their marriage.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's claims:

- The petitioner's undated statements submitted in response to the director's RFEs dated July 26, 2002, October 3, 2002, and June 22, 2005, and as supporting documentation for the appeals filed untimely on November 8, 2005 and May 7, 2007;
- The petitioner's July 18, 2007 letter submitted on appeal;
- A letter dated July 18, 2007 from [REDACTED];
- An affidavit, dated July 26, 2004, from [REDACTED];
- Three letters from [REDACTED]; one undated and the others dated December 4, 2006 and July 18, 2007, respectively;
- An undated letter from [REDACTED];
- An undated letter from [REDACTED];
- A five-year lease for the term beginning on July 1, 2000 and ending on June 30, 2005, for the address at: [REDACTED], Jersey City, New Jersey, listing the petitioner and S-S- as the tenants, and signed by the landlord, a notary public, the petitioner, and [REDACTED];
- A five-year lease for the term beginning on July 1, 2005 and ending on June 30, 2010, for the address at: [REDACTED], Jersey City, New Jersey, listing the petitioner as the tenant, and signed only by the landlord; and
- A photograph of the petitioner with his wife.

In his undated statement submitted in response to the director's July 26, 2002 RFE, the petitioner states that he married S-S- after three months of dating, as S-S- did not believe in living with a man without being married. The petitioner reports that they were happy for the last two years, but their problems began when his wife's cousin, [REDACTED], moved in. The remainder of the statement discusses the alleged abuse.

In his undated statement submitted in response to the director's October 3, 2002 RFE, the petitioner discusses only the alleged abuse.

In his undated statement submitted in response to the director's June 22, 2005 RFE and to the appeal filed untimely on November 8, 2005, the petitioner states that when he and S-S- met, they thought many things clicked between them. The petitioner states that they had wonderful walks across busy streets and in peaceful parks at night. The petitioner explains that S-S- "never wanted to accept a relationship without a good marriage and settlement" and thus they were married after dating for three months. The petitioner describes the first two years of their marriage as "wonderful and prosperous."

In his undated letter submitted as supporting documentation for his May 7, 2007 appeal, the petitioner states that there is no discrepancy in his addresses, as they appear on his good conduct letter and on the affidavits. The petitioner explains that he lived with his spouse at the [REDACTED] address, and that the [REDACTED] address is his current address.

In his July 18, 2007 letter submitted on appeal, the petitioner states that he married S-S- in good faith. In response to the director's finding that the petitioner's "[REDACTED]" address listed on the good conduct certificate is different from the [REDACTED] address mentioned by [REDACTED] and [REDACTED] in their statements, the petitioner states that he resided at the "[REDACTED]" address from July 1, 2000 to June 30, 2005, and at the [REDACTED] address from July 1, 2005 to the present.

In his July 18, 2007 letter, [REDACTED] states that he was present at the petitioner and S-S-'s marriage ceremony and "subsequent function." The petitioner, however, does not mention any details of his wedding or "subsequent function" in any of his statements.

In his July 26, 2004 affidavit, [REDACTED] states that he knows that the petitioner married S-S- in good faith and that [REDACTED] invited them to his apartment for dinner on weekends and holidays. Mr. [REDACTED] however, fails to provide detailed, probative testimony regarding the petitioner's alleged good-faith entry into the marriage. [REDACTED] also provides no further details about the dinners at his apartment where he allegedly observed the petitioner interacting with his wife.

In his December 4, 2006 letter and in his undated letter, [REDACTED] states that he was a guest at the petitioner and S-S-'s wedding celebration and that they visited regularly "as house friends." In his July 18, 2007 letter, [REDACTED] states further that the petitioner is his best friend and that they visit each other regularly. Again, although [REDACTED] claims that he attended the petitioner's wedding ceremony, the petitioner does not mention any details of his wedding ceremony in any of his own statements. Moreover, [REDACTED] provides no further details about his alleged regular visits with the petitioner.

In his undated statement, [REDACTED] states that he invited the petitioner and his wife for dinner at his restaurant and at his house on weekends and holidays, and that they were a "very compatible couple." [REDACTED], however, provides no further details about the dinners at his restaurant and house where he allegedly observed the petitioner interacting with his wife.

In his undated letter, [REDACTED] states that he was the petitioner and S-S-'s landlord from July 1, 2000 through June 30, 2005, that he knew them as a loving couple, and that he and his wife visited them often and vice versa. Again, [REDACTED] provides no further details about the alleged visits with the petitioner and his wife. Moreover, it is noted that, although the first page of the lease agreement for the [REDACTED]" address lists the petitioner and S-S- as the tenants, and specifies that the each tenant must sign the lease, the lease is signed on the last page by the landlord, a notary public, the petitioner, and [REDACTED]. The lease does not contain the signature of S-S-. The record contains no explanation for this inconsistency.

The AAO acknowledges the petitioner's explanation that there are different addresses listed for him on his good conduct certificate and in the statements from [REDACTED] and [REDACTED], because the petitioner resided at the "[REDACTED]" address from July 1, 2000 to June 30, 2005, and at the [REDACTED] address from July 1, 2005 to the present. However, in a letter dated August 21, 2002, [REDACTED] states that the petitioner resides at: [REDACTED] Jersey City, New Jersey 07304, and states further that the petitioner has resided at the said address for two years. Thus, the confusion pertaining to the petitioner's actual address has not been resolved. It is also noted that the photograph of the petitioner and S-S- confirm that they were pictured together, but this document alone does not establish the petitioner's good-faith entry into the marriage.

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 testimony submitted on the petitioner's behalf is not corroborated by the petitioner's own testimony. Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding how he met his wife, their courtship, decision to marry, wedding, and shared experiences, 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 addition to the documentation listed above, the record contains letters from [REDACTED] dated August 20, 2002; December 1, 2006; April 4, 2007; and July 18, 2007.

In his undated statement submitted in response to the director's July 26, 2002 RFE, the petitioner states that he married S-S- after three months of dating. The petitioner reports that they were happy for the last two years, but their problems began when his wife's cousin, [REDACTED], moved in and the petitioner discovered them together in the shower. The petitioner states that he was enraged, but forgave his wife. The petitioner reports that [REDACTED] never returned, but his wife began refusing to have sex with him, and complained about his lovemaking. The petitioner states that his wife wanted other women in bed with them, but as such an act was against his religion, he told her that he would think about it. The petitioner states that after a couple of weeks when she realized that he "was not able to come up with an answer," she began mentally abusing him by calling him obscene and insulting names. The petitioner reports that it became a nightmare and he was unable to work, that he began hallucinating in broad daylight, losing weight, and was powerless and unable to sleep and eat. The petitioner states that he saw a doctor and began to take medication, and that his wife moved out after apologizing and telling him that she married him only to prove to her friends that she, too, could get married.

The petitioner's undated statement submitted in response to the director's October 3, 2002 RFE conflicts with his undated statement submitted in response to the director's July 26, 2002 RFE. In the

³ See footnote No. 2.

earlier statement, he claims that when he discovered his wife and [REDACTED] in the shower together, he was enraged and went outside to calm himself down, and that his wife's name-calling started two weeks later after she realized that he "was not able to come up with an answer" to her request to have other women in bed with them. In his subsequent statement, however, the petitioner states that when he discovered his wife and [REDACTED] in the shower together, he asked his wife what he had done to deserve her betrayal, whereupon she began insulting him, and that when she asked for a "threesome" in bed, he tried to explain to her about his religion and principles and ultimately "told her firmly, 'No,'" whereupon she insulted him and left, slamming the door behind her.

In his undated statement submitted in response to the director's June 22, 2005 RFE and to the appeal filed untimely on November 8, 2005, the petitioner reports several incidents that he does not discuss in his two previous affidavits, such as, on different occasions, giving his wife flowers, a fruit basket, and chocolates, only to have her throw them in his face and insult him. The petitioner also states that one day when he served his wife breakfast in bed, he told her he needed a break, whereupon she threw the tray and burned his hands with hot coffee and threatened to have him deported by calling the police and telling them that he had beat her up. The petitioner explains that he was terribly frightened of her and thus continued living in "slavery." The petitioner states that one day he discovered that his wife had left and robbed him of his valuable wrist watch and a "considerable amount" of cash, the exact amount of which he could not recall. It is not clear why the petitioner did not mention any of these incidents in his previous affidavits.

In his undated letter submitted as supporting documentation for his May 7, 2007 appeal, the petitioner states that he meets the extreme cruelty requirement, as he was mentally abused and had to undergo treatment for depression.

In his July 18, 2007 letter submitted on appeal, the petitioner reiterates that he was cruelly treated by his wife, and states that his abuse was witnessed by his friends during different family functions.

In his July 18, 2007 letter, [REDACTED] reports incidents and behaviors of the petitioner's wife that the petitioner himself does not discuss in any of his statements. For example, [REDACTED] states that on August 5, 2002, the petitioner had invited friends to his birthday party, and that S-S created such a fuss over some petty matter that the function ended before any food or refreshments were served. The petitioner, however, does not mention this incident in any of his statements. [REDACTED] also states that the petitioner's wife not only abused the petitioner, but also abused the petitioner's friends, and that she threw utensils and teapots at the petitioner and even tried to beat him. Again, the petitioner does not report such behavior in any of his statements. In sum, [REDACTED] discusses incidents and actions of the petitioner's wife that the petitioner himself does not mention in any of his own testimony, which creates inconsistencies that detract from the probative value of [REDACTED] testimony.

In his July 18, 2007 letter, [REDACTED] states that, because of marital disharmony, the petitioner is unhappy with his marital life. Again, [REDACTED] provides no further details about his alleged

knowledge of the petitioner's marital disharmony.

In addition to the evidence discussed above, the petitioner submitted four letters from [REDACTED] dated August 20, 2002, December 1, 2006, April 4, 2007, and July 18, 2007, respectively. In his August 20, 2002 letter, [REDACTED] states that the petitioner is under his care for depression, insomnia, low back pain, and gastritis. [REDACTED] explains that the petitioner is being treated every six to eight weeks with medication and therapy and that the petitioner's first treatment was on November 10, 2001 for depression due to marital disharmony. [REDACTED] states that the petitioner's last visit was on August 5, 2002.

In his December 1, 2006 letter, [REDACTED] states that the petitioner is under his care for depression, ADHD, insomnia, gastritis, low back pain, and bipolar and manic depression. [REDACTED] explains that the petitioner is being treated every six to eight weeks with medication and psychotherapy. [REDACTED] states that the petitioner was first treated for marital disharmony on November 1, 2001.

In his April 4, 2007 letter, [REDACTED] states that the petitioner is under his care for bipolar depression, ADHD, insomnia, and low back pain. [REDACTED] states that the petitioner "was being treated for marital disharmony since 11/01/01," that the petitioner is emotionally unstable and responding to medication, and that his prognosis is "guarded (not fair)."

In his July 18, 2007 letter, [REDACTED] states that the petitioner is under his care for bipolar depression, ADHD, insomnia and low back pain. [REDACTED] also states that the petitioner was being treated for marital disharmony since November 1, 2001, and that the petitioner is emotionally unstable and responding to medication and psychotherapy.

The letters from [REDACTED] also fail to establish that the petitioner's wife subjected him to battery or extreme cruelty. [REDACTED], who claims to have been treating the petitioner for a variety of disorders since 2001, does not provide any specific information related to his treatment of the petitioner for "marital disharmony." [REDACTED] does not provide any specific information indicating that the abuse of the petitioner's wife was a causative or contributing factor in the petitioner's disorders. In addition, the record contains unexplained inconsistencies and deficiencies, as discussed above, which detract from the probative value of [REDACTED] testimony.

In this case, we do not find the petitioner's evidence to be credible or sufficient to meet the petitioner's burden of proof. As discussed above, the petitioner's statements contain inconsistencies regarding the alleged abuse. In addition, the witnesses of the alleged abuse discuss incidents and actions of the petitioner's wife that the petitioner himself does not mention in any of his own testimony, which creates inconsistencies that detract from the probative value of their testimony. The petitioner has not provided any credible evidence in support of his claims of abuse, which include, his wife throwing flowers, chocolates, and a fruit basket at him and burning him with coffee. 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 claims made by the petitioner fail to establish that he 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.

Upon review of the record in its entirety, the record does not indicate that the petitioner's wife subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner's wife subjected him to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that he married his wife 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.

Beyond the decision of the director, the petitioner has not established that he resided with his wife. As discussed above, the record contains inconsistencies regarding the petitioner's alleged joint residence. For example, although the first page of the lease agreement for the [REDACTED] address lists the names of the petitioner and S-S- as the tenants, and specifies that each person must sign the lease, the lease is signed on the last page by the landlord, a notary public, the petitioner, and [REDACTED] but is not signed by S-S-. In addition, in a letter dated August 21, 2002, [REDACTED] states that the petitioner resides at: [REDACTED] Jersey City, New Jersey, and states further that the petitioner has resided at the said address for two years. This conflicts with the petitioner's assertion on appeal that he resided at the [REDACTED] address from July 1, 2000 to June 30, 2005. The record contains no explanation for these inconsistencies. For this additional reason, the petition may not be approved.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.