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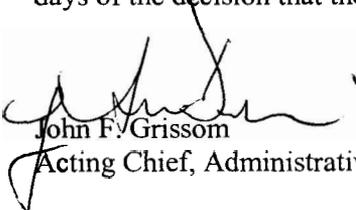
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

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

Counsel filed a timely appeal on October 22, 2008.

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

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

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

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

(ii) *Legal status of the marriage.* The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. . . .

* * *

(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 United States in the past.

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

* * *

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

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

Evidence for a spousal self-petition –

- (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .
- (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.

Section 204(a)(1)(A)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a citizen of the United States is eligible to self-petition under these provisions if he or she is an alien:

- (CC) who was a bona fide spouse of a United States citizen within the past 2 years and –
- (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence
- (bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

- (ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. . . .

The petitioner is a citizen of Ghana who entered the United States as a B-2 visitor on October 9, 2002. He married J-L-¹ a citizen of the United States, on September 23, 2004. J-L- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on December 13, 2004. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date. The Forms I-130 and I-485 were denied on July 5, 2006.

The petitioner filed the instant Form I-360 on July 26, 2007. The director issued a request for additional evidence on April 4, 2008, and requested additional evidence to establish that the petitioner shared a joint residence with J-L-; that J-L- subjected him to battery or extreme cruelty; and that he married J-L- in good faith. The petitioner responded on June 30, 2008. After considering the evidence of record, the director denied the petition on September 19, 2008.

Upon review of the entire record of proceeding, the AAO agrees with the director’s decision to deny the petition.

Joint Residence

The first issue on appeal is whether the petitioner has established that he and J-L- shared a joint residence. On the Form G-325A that he submitted to USCIS on December 13, 2004, the petitioner provided the following residential history:

Address	Dates of Claimed Residence
[REDACTED]	October 2002 to August 2004
[REDACTED]	August 2004 to present (December 2004)

The petitioner testified on the Form I-360 that he and J-L- shared a joint residence from July 2004 until November 2004, and that the last address at which they lived together was [REDACTED] in Worcester, Massachusetts.

In his July 24, 2007 self-affidavit, the petitioner stated that when J-L- agreed to marry him “in June or July of 2004,” he was living at the [REDACTED] address. However, this statement conflicted with the petitioner’s statement on the Form G-325A: his testimony on the Form G-325A indicated that he would have been living at the [REDACTED] residence at the time he proposed marriage to J-L- in “June or July of 2004,” and that he did not move into the [REDACTED] address until August 2004.

¹ Name withheld to protect individual’s identity.

The petitioner also stated in his July 24, 2007 self-affidavit that three days after accepting his marriage proposal, J-L- suggested that the couple look for an apartment to share and, less than one week later, they found the [REDACTED] apartment.

The petitioner stated that, although he paid the first and last months' rent, J-L- signed the lease because they were not sure that, given his immigration status, the petitioner could sign a lease. However, it is unclear to the AAO why such would be the case, as the record also contains a lease agreement for the [REDACTED] address that was signed by both J-L- and the petitioner on August 17, 2004, for a one-year period of residency commencing on August 18, 2004 and ending on August 19, 2005. The August 17, 2004 lease for the [REDACTED] residence also undermines the petitioner's testimony that he was living at the [REDACTED] residence at the time he proposed marriage to J-L- "in June or July of 2004," as the lease indicates that the couple would not have taken possession of the residence until August of that year.

Finally, the petitioner also stated that he and J-L- lived together at the [REDACTED] address before they moved into the [REDACTED] residence because work had to be performed on the [REDACTED] residence.

On the Form G-325A that he submitted to USCIS on July 26, 2007, the petitioner provided the following residential history:

Address	Dates of Claimed Residence
[REDACTED]	October 2002 to July 2004
[REDACTED]	July 2004 to November 2004
[REDACTED]	November 2004 to July 2007

The petitioner's testimony on this Form G-325A conflicted with his testimony on the previous Form G-325A, his self-affidavit, and the Form I-360. Although the petitioner had previously claimed that he and J-L- lived together at the [REDACTED] residence before moving into the [REDACTED] residence, he now claimed that they lived together at the [REDACTED] first. It is unclear how, if the petitioner did not move into the [REDACTED] address until November 2004, he and J-L- could have been living there when they found the [REDACTED] residence. It is also unclear why, if they moved into the [REDACTED] residence in July 2004 (and the work that had to be performed on the [REDACTED] location was finished by then), one month later, J-L- and the petitioner signed a one-year lease for the [REDACTED] address for the one-year period of time between August 2004 and August 2005. Moreover, if the [REDACTED] address was the final address at which the petitioner and J-L- lived together, and the petitioner moved out of that apartment in November 2004, the petitioner's evidence of joint residence is of little value, as those documents all indicate that the petitioner and J-L- were living together at the [REDACTED] residence in 2005.

In her July 18, 2007 psychological evaluation, [REDACTED] stated that the petitioner told her that he had only stayed in the couple's "new apartment" for two weeks before J-L- ordered him to leave. As the petitioner later testified that he only lived at the [REDACTED] address for a very short period of time, it appears as though the "new apartment" to which [REDACTED] was referring was the [REDACTED] residence. However, this timeframe conflicts with the period of residence at this address claimed by the petitioner on the Form G-325A. The petitioner's testimony to [REDACTED] with regard to the lease for the [REDACTED] address also conflicted with his testimony in the July 24, 2007 self-affidavit. As was noted previously, the petitioner testified in that self-affidavit that J-L- signed the lease for the [REDACTED] residence, as the couple was unsure as to whether the petitioner was able to sign a lease, given his immigration status. However, the petitioner told [REDACTED] that the landlord of the [REDACTED] address would not allow J-L- to sign the lease due to her poor credit rating.

[REDACTED] also reported that the petitioner had told her that J-L- lost her job in October 2004, one month after their wedding, during the period in which she and the petitioner were looking for a new apartment. However, according to the petitioner's July 24, 2007 testimony, the lease for the [REDACTED] apartment was signed approximately one week after their engagement "in June or July of 2004," and they both signed a one-year lease for the [REDACTED] apartment in August 2004. If that testimony is accepted, it appears that the couple was searching for a third apartment at this time.

In his April 4, 2008 request for additional evidence, the director requested clarification of the inconsistencies of record. In a June 26, 2008 statement, counsel stated that she made an error in preparing the Form I-360, and that the petitioner and J-L- actually lived together from July 2004 until November 2005, and the petitioner made a similar declaration. Counsel states that she prepared the forms, that neither she nor the petitioner noticed the error, and that she takes full responsibility for the error.

However, the AAO does not find the declarations of counsel and the petitioner persuasive, as they contradict the petitioner's testimony to [REDACTED]. In her evaluation, [REDACTED] stated the following:

He paid all of the expenses associated with the couple's move into a new apartment in November, two months following their wedding – but two weeks after moving in, his wife demanded that he leave. . . .

In her evaluation, [REDACTED] stated that her interview with the petitioner "is something more like a lengthy interrogation, where the sheer force of time, fatigue, emotional intensity[,] and repetition tend to elicit valid, truthful data." It is unclear why the petitioner would have told [REDACTED] that the couple separated in November 2004, two months after their wedding, if they in fact separated in November 2005. The assertions of counsel and the petitioner that identification of November 2004 as the end of the couple's joint residence was merely a typographic error is undermined by the petitioner's direct testimony to [REDACTED] that the couple separated in November 2004, two months after their wedding. Neither counsel nor the petitioner has addressed this conflict between their own testimony regarding the date the joint residence ended and the testimony of the petitioner to [REDACTED].

In his June 26, 2008 affidavit, the petitioner stated that he and J-L- lived together at the [REDACTED] residence for a very short period of time. According to the petitioner, shortly after they moved into that residence, J-L- forced him to leave. The petitioner stated that, after he moved out of the [REDACTED] residence, he returned to the [REDACTED] residence. According to the petitioner, he returned to the [REDACTED] residence, and resumed living with his previous roommate, [REDACTED], with whom he had also shared the [REDACTED] residence before J-L- moved into the apartment.²

Given that the petitioner did sign the lease for the [REDACTED] residence, it is unclear to the AAO why the petitioner and J-L- would have been unsure whether he could sign the lease for the [REDACTED] residence, which would have been signed after they had *both* signed the lease for the [REDACTED] residence, given the petitioner's testimony that they were already living at the [REDACTED] residence when they found the [REDACTED] apartment. It also conflicts with the petitioner's statement to [REDACTED] that J-L- was not permitted to sign the lease for the [REDACTED] apartment due to her poor credit rating. Nor is it clear to the AAO why, if the couple had just signed a one-year lease for the [REDACTED] residence, a lease for residence at the [REDACTED] address was signed in 2004. Further, the petitioner's testimony that he lived with J-L- at the [REDACTED] address for only a very short time before their November 2005 separation would indicate that the work that had to be performed at the [REDACTED] residence took over one year to complete, as the lease for that apartment was signed one week after their engagement. Rather than clarifying matters, the submission in response to the director's request for additional evidence introduced further inconsistencies into the record.

The AAO agrees with the director's analysis. The multiple inconsistencies in the petitioner's testimony catalogued above severely undermine the credibility of that testimony. Counsel's statement on appeal that this was mere "confusion with dates" and that the director "should have taken into account that many abused spouses have this type of confusion" is insufficient. The evolving nature of the petitioner's account of his alleged joint residence with J-L- goes beyond a mere "confusion with dates," as both the locations and the length of the alleged joint residence have evolved throughout the pendency of this petition.

Nor does the documentary evidence of record (bank statements, utilities, etc.) submitted by the petitioner establish that he and J-L- shared a joint residence. First, as was noted by the director, the AAO notes that this evidence was all procured shortly before a scheduled permanent residency interview. Second, all of this evidence was obtained in 2005, which is after the date that the petitioner testified to [REDACTED] that the alleged joint residence ended.

² This is inconsistent with the petitioner's previous testimony: On the Form G-25A that he submitted in December 2004, he stated that he had moved into the [REDACTED] residence in August 2004, and the lease for that residence was signed by both the petitioner and J-L- in August 2004. It is unclear how the petitioner and [REDACTED] could have lived together at the [REDACTED] residence prior to the joint residence of the petitioner and J-L- at that address.

Further, the AAO highlights specific evidentiary problems with specific evidence which was not resolved by the petitioner on appeal. For example, with regard to the life insurance policy, the director stated in his denial that the J-L-'s name is misspelled on the policy, and that no mention of her child was made on the policy. The director noted that the application for the policy was not submitted, and that it was unclear how long premiums on the policy were paid. For all of these reasons, the director found that it was unclear how actively involved J-L- was in the procurement of this policy. None of these issues were addressed on appeal; rather, counsel simply stated that the director did not accord the policy sufficient weight. The director also noted that J-L-'s name was misspelled on several of the utility statements and, as such, it was unclear whether she actually had any responsibility for those accounts. For those reasons, he accorded little evidentiary weight to those statements. Again, counsel's response on appeal is simply that the director erred in reaching that conclusion.

The AAO finds that the evidence of record fails to sufficiently explain the inconsistencies in the petitioner's testimony. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with J-L-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The second issue on appeal is whether the petitioner has established that J-L- subjected him to battery or extreme cruelty. In his testimony, the petitioner stated that J-L- withdrew money from the couple's bank account without his permission; yelled at him; called him names; ridiculed his cultural background; threatened his immigration status; and abused alcohol in their residence.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition. Although the AAO does not dispute that J-L-'s behavior as described by the petitioner was unkind and inconsiderate, the petitioner has failed to establish that her actions rose 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. Nor has the petitioner established that J-L-'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. As noted by the court in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ."

Nor does [REDACTED] evaluation establish that the petitioner was subjected to battery or extreme cruelty. As was noted by the director, [REDACTED] evaluation was based upon a single interview with the petitioner. The record fails to reflect an ongoing relationship between a mental health professional and the petitioner. The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering her findings speculative and diminishing the evaluation's value. Nor is there any evidence of any treatment for the symptoms of major depression and post traumatic stress disorder identified by [REDACTED]

The petitioner has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. The petitioner has failed to establish that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The third issue on appeal is whether the petitioner has established that he married J-L- in good faith. The AAO agrees with the director. The AAO first notes the petitioner's failure to establish that he shared a joint residence with J-L-. Much of the evidence submitted by the petitioner as evidence of the couple's alleged joint residence also served as evidence of his alleged good faith entry into the marriage. However, as was noted previously, the petitioner's account of how long the alleged joint residence lasted evolved over the course of the petition's pendency. The documentary evidence of joint residence, such as bank statements, utility bills, and the life insurance policy, was all procured in 2005, after the date that the petitioner told [REDACTED] the joint residence had ended.

Further, even if the petitioner had established that he and J-L- had shared a joint residence, and there were no questions with regard to the credibility of his evidence, the AAO would still decline to enter a finding that the petitioner had made an adequate demonstration that he had entered into marriage with J-L- in good faith. The record lacks critical information with regard to the intentions of the petitioner at the time he entered into marriage with J-L-. For example, there is little information regarding the couple's first meeting; the petitioner's first impressions of J-L-; their decision to date; their first date; their courtship; their decision to marry; and their wedding. The record indicates that J-L- gave birth to a child in 2004; there is no discussion of how that event factored into the relationship.

Such information would allow the AAO to examine the petitioner's intentions upon entering into the marriage. The evidence of record fails to demonstrate that the petitioner entered into marriage with J-L- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the AAO finds that the petition may not be approved for another reason.

Qualifying Relationship and Eligibility for Classification as an Immediate Relative

The record establishes that J-L- and the petitioner divorced on August 24, 2006, nearly eleven months before the petitioner filed the petition. As the petitioner has failed to establish that he was subjected to battery and/or extreme cruelty by J-L-, he has therefore also failed to satisfy section 204(a)(1)(A)(ii)(II)(aa)(ccc) of the Act, which states that an individual who is no longer married to a citizen of the United States is eligible to self-petition under these provisions if he or she demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. As the petitioner has failed to demonstrate that he suffered battery and/or extreme cruelty by J-L-, he has therefore also failed to demonstrate a

connection between the termination of the marriage and any battery or extreme cruelty to which he was subjected by J-L-.

Accordingly, the petitioner has failed to establish a qualifying relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. He is, therefore, ineligible for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that he shared a joint residence with J-L-; that J-L- subjected him to battery or extreme cruelty; or that he married J-L- in good faith. Beyond the decision of the director, the AAO also finds that the petitioner has failed to indicate that he has a qualifying relationship with a citizen of the United States, or that he is eligible for immediate relative classification on the basis of such a relationship. Accordingly, based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. For all of these reasons, the AAO will not disturb the director's denial of the petition.

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 and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.