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

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: **MAR 30 2009**

EAC 07 028 50701

IN RE: [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.

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 The director's decision will be withdrawn and the matter remanded for further action.

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 has a qualifying relationship with a United States citizen or lawful permanent resident; (2) that he is eligible for immigrant classification as an immediate relative; (3) that he shared a joint residence with his wife; (4) that his wife subjected him to battery or extreme cruelty; and (5) that he married his wife in good faith.

The petitioner submitted a timely appeal on January 14, 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 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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

The evidentiary guidelines for a self-petition 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.

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

* * *

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

The petitioner is a citizen of Honduras who entered the United States, without inspection, on or around January 12, 2002. He married his first wife, S-A-, [1] a lawful permanent resident of the United States, on August 1, 2003, in Naples, Florida. S-A- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on September 15, 2003. On January 28, 2004, USCIS received a letter from S-A- requesting that the petition be withdrawn and, accordingly, a letter notifying S-A- that the petition had been withdrawn was sent on March 8, 2004. The petitioner married A-P-, [2] a United States citizen, on February 14, 2005.

The petitioner filed the instant Form I-360 on November 6, 2006. The director issued a request for additional evidence on June 4, 2007, and requested additional evidence to establish that the petitioner has a qualifying relationship; that the petitioner had been subjected to battery and/or extreme cruelty by A-P-; and that the petitioner married A-P- in good faith. The petitioner responded to the director's

[1] Name withheld to protect individual's identity.
[2] Name withheld to protect individual's identity.

request on August 2, 2007, and submitted additional evidence. After considering the evidence of record, the director denied the petition on December 13, 2007.

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

**Qualifying Relationship and Eligibility for Classification as an Immediate Relative**

As noted previously, the record indicates that the petitioner married S-A- on August 1, 2003. However, the record contains no evidence in the record to indicate that this marriage was legally terminated prior to the petitioner's marriage to A-P- in 2005. In his June 4, 2007 request for additional evidence, the director specifically requested evidence of the legal termination of the petitioner's first marriage. However, the petitioner's August 2, 2007 response did not include such evidence, nor did the petitioner explain his failure to submit such evidence. In his December 13, 2007 denial, the director noted the record's lack of documentation proving that the petitioner's first marriage was legally terminated. On appeal, the petitioner again fails to submit such evidence. Nor does he explain why he has again elected not to submit such evidence.

The petitioner has now been afforded two opportunities to submit evidence of the legal termination of his marriage to S-A-, but he has twice failed to comply. He has, therefore, failed to establish that his first marriage was legal terminated before entering into the marriage with A-P-. Thus, the record fails to establish that his marriage to A-P- is legally valid. As evidence of a qualifying relationship to a citizen of the United States, the regulation at 8 C.F.R. § 204.2(c)(2)(ii) specifically requires "proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser." As the petitioner has failed to submit proof of the termination of his prior marriage to S-A-, he has failed to establish that he has a qualifying relationship with A-P-.[3]

As the petitioner has failed to establish a qualifying relationship with A-P-, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, he is ineligible for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act. The AAO, therefore, agrees with the director's analysis.

**Joint Residence**

The second issue on appeal is whether the petitioner has established that he shared a joint residence with A-P-. Upon review, the AAO agrees with the director's determination that the petitioner has not established that he and A-P- shared a joint residence.

The petitioner stated on the Form I-360 that he and A-P - shared a joint residence from December 2003 until April 2006. However, in his July 24, 2007 affidavit, the petitioner indicates that, during their courtship, he lived in Florida with his parents, and A-P- lived in California. He states that he flew to

[3] The AAO notes that the petitioner claimed on the Form I-360 and in his personal statement that A-P- had also been previously married. The record does not contain evidence of the termination of A-P-'s alleged first marriage.

California to visit A-P- four times, and that A-P- flew to Florida to visit him three times. On her third trip, which occurred in February 2005, they married. The petitioner does not state in his affidavit that he and A-P- shared a joint residence prior to their wedding; rather, his testimony indicates that they did not live together until after the ceremony. According to the petitioner, he moved to California three months after their wedding, and they lived together for six months. The petitioner does not indicate that he and A-P- lived together in Florida with the petitioner's parents; his testimony describing their residence together begins with his move to California, which indicates that he and A-P- never shared a joint residence in Florida. As such, the petitioner's testimony in his July 24, 2007 affidavit indicates that his purported joint residence began in May 2005, in California, three months after their wedding, and ended six months later in November 2005, rather than beginning in December 2003 and ending in April 2006, as asserted by the petitioner on the Form I-360. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* The inconsistencies in the petitioner's testimony undermine the evidentiary weight of that testimony.

Nor does the evidence submitted by the petitioner as evidence that he and A-P- shared a joint residence demonstrate that they in fact shared a joint residence. When the petitioner filed the Form I-360, he submitted copies of two joint bank account statements, and labeled them as "proofs [sic] of residency together." These two bank statements, which are both dated August 2004, indicate that the petitioner and A-P- were living together in Naples, Florida as of that date. However, the petitioner's July 24, 2007 affidavit makes clear that A-P- was not living in Florida in 2004, and indicates that A-P- may in fact have never moved to Florida. Further, the record contains copies of letters, postmarked on August 13, 2004 and September 16, 2004, that A-P- mailed, from California, to the petitioner in Florida. If A-P- were in fact living in Florida in August 2004, then it is unclear to the AAO why she would have been mailing the petitioner correspondence from a California address. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The only evidence that indicates that A-P- ever lived in Florida is: (1) a copy of a statement requesting payment for dental services; (2) a copy of an envelope addressed to A-P- at a Florida address; and (3) a copy of a blank check. The dental statement names A-P- as the guarantor of payment for dental services performed on the petitioner, and provides a Florida address. However, the AAO notes that this bill is dated June 17, 2005, a date on which the petitioner and A-P- were living together in California, according to the petitioner's testimony. The envelope was sent to A-P- at a Florida address, but the AAO notes that the envelope is postmarked January 2005. According to the petitioner's testimony, A-P- was still living in California at that point. Nor does the copy of a blank check establish joint residence. There is no evidence this checking account was ever used, as

there are no copies of bank statements in the record (the checking account is not with the same bank as the banking statements referenced previously). *See id.*

The other two affidavits of record—the July 23, 2007 affidavit from Nina Bernardez, the petitioner's mother, and the July 16, 2007 affidavit from "Teresa," the petitioner's cousin do not address the issue of joint residence.

On appeal, the petitioner submits several more documents as evidence that he and A-P- shared a residence in California: (1) a copy of a solicitation to buy a magazine subscription; (2) a copy of a prescription for ibuprofen; (3) a copy of a cell phone billing statement; (4) three billing statements from the USC Medical Center; (5) a banking statement; and (6) DNA testing results indicating that the petitioner is the likely father of a child born to A-P- in 2007.

However, none of these documents establish that the petitioner and A-P- shared a joint residence. As noted previously, the petitioner indicated in his July 24, 2007 affidavit that he and A-P- lived together between May and November of 2005. However, the AAO notes that all of these documents are from either 2006 or 2007, after the period in which the petitioner and A-P- lived together. Moreover, the AAO notes that none of these documents name both A-P- and the petitioner. Nor do the results of the DNA testing indicate that the petitioner and A-P- shared a joint residence. One of the DNA testing printouts indicates that the child, a girl, was born on December 11, 2006, which means that she would have been conceived after the period of joint residence claimed by the petitioner in his July 24, 2007 affidavit.

The petitioner has failed to establish that he and A-P- shared a joint residence. The petitioner's July 24, 2007 testimony contains numerous unresolved inconsistencies and discrepancies between both the Form I-360 and the evidence of record. Such inconsistencies, and the petitioner's failure to clarify them, undermine his claim. As the record lacks resolution of these inconsistencies, the AAO finds that the petitioner has failed to establish that he shared a joint residence with A-P-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

**Battery or Extreme Cruelty**

The AAO agrees with the director's determination that the petitioner failed to establish that A-P- subjected him to battery and/or extreme cruelty. The record contains the following evidence in support of the petitioner's assertion that he was the victim of battery and/or extreme cruelty:

- The petitioner's July 24, 2007 self-affidavit;
- The petitioner's statements on the Form I-290B, which was received at the service center on January 14, 2008;
- A July 23, 2007 letter from [redacted]z, the petitioner's mother; and
- A July 16, 2007 letter from "[redacted]" the petitioner's cousin.

In his July 24, 2007 affidavit, the petitioner states that he visited A-P- in California four times while he was living in Florida. According to the petitioner, the house was very clean every time he visited A-P-.

They married in February 2005, and the petitioner moved to California in May 2005. The petitioner states that things went well for the first month. However, after that time, things changed. The petitioner states that he and A-P- lived together for six months, and that they spent eighty percent of that time arguing. The petitioner states that the house was always messy, and that A-P- would only clean the house on Sundays. He also states that A-P- began pressuring him to get a job. The petitioner describes mood swings: A-P- always woke up "with an attitude without saying good morning"; did not give him a kiss when she came home from work, but went straight to bed; called him names; and asked him why he was in the United States if he did not work. She also "would give me my food with a bad attitude," or in a cold manner, and accused the petitioner of only liking his mother's food; of always being sad in the house; and of blaming her for all the bad things in his life. The petitioner also states that, when A-P- was mad at him, she would take presents he had given her and either throw them at him, or set them on fire. She would also call him names. The petitioner describes how, on one occasion, after the petitioner had bought A-P- flowers, she told the petitioner that she was not much of a flower person. According to the petitioner, A-P- took medication for allergies and depression, and screamed at him for no reason when she was angry or frustrated. The petitioner also describes an argument, which occurred in the kitchen, during which A-P-, while holding a knife, told the petitioner to leave the apartment before something bad happened.

The petitioner states that he injured his shoulder, and had to stop working as a result. According to the petitioner, after his injury A-P- removed him from her insurance coverage, since he was no longer working. The petitioner states that, after his injury, which required him to stop working, he began cleaning the house, doing the yardwork, and washing the clothes which, according to the petitioner, "not a lot of men would want to do." The petitioner states that A-P- did not want him to socialize with family or friends; did not want him sending money to his mother; and threatened to send him back to Honduras. He states that A-P- told her mother he was treating her badly.

The petitioner states that only two people knew what was really going on: his mother, and his cousin [redacted]. The petitioner states also that, on one occasion, A-P- called his mother and told her to take the petitioner back to Florida, because she did not want him in her home any longer.

In her July 23, 2007 letter, [redacted], the petitioner's mother, states that she was not impressed with A-P- when she met her; that she did not introduce herself to the family in a good way; that she could tell that A-P- was going to be a controlling wife; and that, although she spoke to the petitioner about A-P- before the wedding, the petitioner said he was happy and wanted to marry her. Ms. [redacted] writes that A-P- called her to say bad things about the petitioner; and also called to tell her that she was tired of the petitioner, and no longer wanted him. [redacted] states that the petitioner is a good person; has good values; is family-oriented; and "suffered mentally" because of A-P-.

In her July 16, 2007 letter, "[redacted]" the petitioner's cousin, states that she has been through everything with the petitioner. She states that the petitioner told her that A-P- was controlling and usually in a bad mood. She also states that the petitioner told her he was "going crazy," and that he sometimes wanted to disappear. According to [redacted], it was hard to see the petitioner in this situation.

Upon review, the AAO agrees with the director's determination that the petitioner has failed to establish that he was the victim of battery or extreme cruelty, as those terms are defined in the regulation. While A-P-'s actions as described in the record may have been unkind and inconsiderate, they do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner and the letters submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that A-P-'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. . . ." The petitioner has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. He 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 AAO agrees with the director's determination that the petitioner failed to establish that he married A-P- in good faith. As a preliminary matter, the AAO incorporates here its previous discussion with regard to the petitioner's failure to establish that he and A-P- shared a joint residence, and notes again the numerous inconsistencies and discrepancies in the petitioner's testimony with regard to the couple's joint residence. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The petitioner states that he met A-P-, online, "around July or August 2003" on a website called "American Singles." According to the petitioner, "[e]verything started like friends." They started chatting and, within 10 minutes, he asked A-P- for her phone number, and they talked for approximately two hours. The petitioner states that their friendship lasted six months.

However, the petitioner's timeline is contradicted by the printouts of e-mails and online chats with A-P- he submits as evidence of his good faith entry into the marriage. While the petitioner states that he met A-P- "around July or August 2003," the record contains a printout of a December 19, 2003 e-mail from A-P- providing the petitioner with her name and address. If they had met in July or August, it is unclear why A-P- would only be telling the petitioner her name in December. *See id.*

According to the timeframe indicated in his July 24, 2007 affidavit, the petitioner and A-P- began dating, online, in 2004, while he was living in Florida with his parents and A-P- was living in

California. According to the petitioner, as evidenced by the e-mails he submits into the record, "[t]he communication that we had was really great." The petitioner submits e-mails indicating that he bought A-P- several presents in 2004, and that he also wired money to her on several occasions.

The record also contains photographs of the couple, and copies of cards and letters, as well as the evidence discussed previously.

Upon review, the AAO agrees with the director's decision that the petitioner has failed to establish that he entered into marriage with A-P- in good faith. First, the AAO notes the inconsistent evidence in the record with regard to when the relationship began.

Further, the AAO notes that if the petitioner began conversing via e-mail, online chat, and telephone with A-P- regarding intimate and personal details of their lives in "July or August" of 2003, it is unclear how such activities factored into his marriage to his first wife, S-A-, which occurred on August 1, 2003, assuming that his marriage to S-A- was a bona fide marriage. The petitioner does not explain the role played by S-A- during this time. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The photographs of record do not establish that the petitioner entered into marriage with A-P- in good faith. They are not dated or explained; they indicate only that the petitioner and A-P- were in the same location on a particular day. Nor do the copies of letters and cards establish that he married A-P- in good faith, as there is no evidence that any of these cards or letters were ever sent. Finally, the AAO incorporates here its previous discussion with regard to the deficiencies in the other evidence of record. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Again, doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible.

The evidence of record fails to demonstrate that the petitioner entered into marriage with A-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

**Good Moral Character**

Beyond the decision of the director, the AAO finds that the petition may not be approved for an additional reason, as the record fails to establish that the petitioner is a person of good moral character.

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in November 2003 and ending in November 2006).

In support of his assertion that he is a person of good moral character, the petitioner submits what appears to be a copy of a July 26, 2005 statement indicating he has no criminal record. However, this statement does not satisfy 8 C.F.R. § 204.2(c)(2)(v). First, as the statement is dated July 26, 2005, it does not cover the entire three-year period immediately preceding the filing of the Form I-360 (which, again, is the period beginning in November 2003 and ending in November 2006). Second, although the jurisdiction from which the document was issued is not clear, it does not satisfy 8 C.F.R. § 204.2(c)(2)(v), as it is only one document. Again, that regulation requires local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. In this case, as the petitioner lived in both Florida and California during that time period, he would need, at minimum, two local police clearances or state-issued criminal background checks to satisfy 8 C.F.R. § 204.2(c)(2)(v), and establish that he is a person of good moral character.

As the petitioner has failed to submit the requisite al police clearances or state-issued criminal background checks, he has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. For this additional reason, the petition may not be approved.

## Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that he has a qualifying relationship with a United States citizen or lawful permanent resident; that he is eligible for immigrant classification as an immediate relative; that he shared a joint residence with his wife; that his wife subjected him to battery or extreme cruelty; and that he entered into marriage with his wife in good faith. Beyond the decision of the director, the AAO also finds that the petitioner has failed to establish that he is a person of good moral character.

However, the record indicates that the director did not issue a notice of intent to deny the petition (NOID) before he issued his decision. Although the record establishes that the petitioner is ineligible for the benefit sought, the petition must be remanded, solely on procedural grounds, so that the petitioner has the opportunity to respond to a NOID. The petition must be remanded to the director for issuance of a NOID in compliance with the regulation in effect at 8 C.F.R.

§ 204.2(c)(3)(ii)[4] on the date this petition was filed, and the director must afford the petitioner the opportunity to submit a response within the 60-day period. On remand, the director need only address the issues before the AAO on appeal; i.e., whether the petitioner has established that he has a qualifying relationship with a United States citizen or lawful permanent resident; that he is eligible for immigrant classification as an immediate relative; that he shared a joint residence with his wife; that his wife subjected him to battery or extreme cruelty; that he entered into marriage with his wife in good faith; and that he is a person of good moral character.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's December 13, 2007 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

[4] USCIS promulgated a rule on April 17, 2007 related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing of this petition on November 6, 2006.