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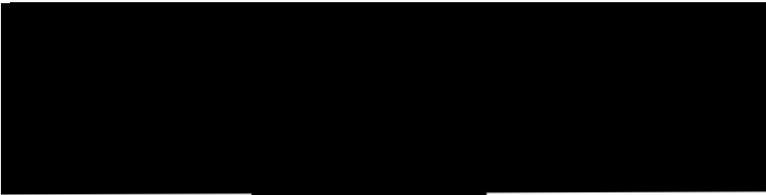
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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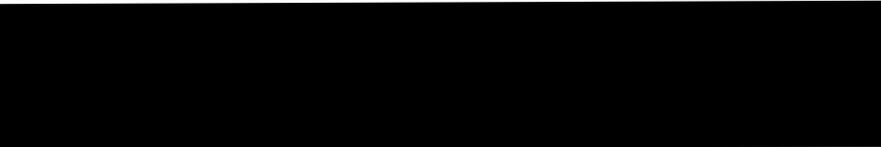
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IN RE:



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 affirmed his decision in response to a subsequent motion. 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 his wife subjected him to battery or extreme cruelty; and (2) that he is a person of good moral character.

Counsel filed a timely appeal on April 15, 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:

- (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.

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.

- (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.

The petitioner is a citizen of Nigeria who entered the United States in K-1 fiancé status on April 9, 2006. He married W-M-,<sup>1</sup> a citizen of the United States, on April 14, 2006.

The petitioner submitted the instant Form I-360 on March 12, 2007. The director issued a request for additional evidence on March 30, 2007, and requested additional evidence to establish that the petitioner had shared a joint residence with W-M-, and that he is a person of good moral character. The petitioner responded on June 1, 2007. The director issued a second request for additional evidence on May 30, 2007, and asked the petitioner to confirm whether or not he and W-M- were still married. He also requested additional evidence to establish that he was subjected to battery or extreme cruelty

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

by W-M-; that he is a person of good moral character; and that he married W-M- in good faith. The petitioner responded on July 27, 2007.

The director issued a notice of intent to deny (NOID) the petition on August 14, 2007, which notified the petitioner of deficiencies in the record and afforded him the opportunity to submit further evidence to establish that he had a qualifying relationship with W-M-; that he was subjected to battery and/or extreme cruelty by W-M-; that he is a person of good moral character; and that he married W-M- in good faith. The petitioner responded to the director's NOID on September 14, 2007.

After considering the evidence of record, the director denied the petition on November 21, 2007.

### **Battery or Extreme Cruelty**

The first issue on appeal is whether the petitioner was subjected to battery or extreme cruelty by W-M-. In his March 1, 2007 self-affidavit, the petitioner stated that he arrived in the United States on April 9, 2006 and that over the course of the next several days, they had intimate relations on several occasions without using condoms. Five days after his arrival in the United States, he and W-M- married. Ten days after his arrival in the United States, W-M- asked the petitioner to accompany him to an appointment. According to the petitioner, W-M- begged him to answer "yes" to any question that would be asked of him. Although the petitioner stated that he agreed to do so, he soon realized that the woman whose questions he was answering in the affirmative was W-M-'s psychologist, and that the questions she was asking him were about HIV and AIDS. The petitioner stated that he was shocked and speechless upon realizing that W-M- was infected with HIV, and that W-M- begged him to "work with her" and meet with her physician, who would explain that everything would be fine. The petitioner stated that W-M-'s physician told him that W-M- was doing great; that she was taking her medication; and that everything between the two of them should be fine. The doctor also advised that they should use condoms during intimate relations. The petitioner stated that, from that day forward, he refused to touch W-M-, even though she tried to reassure him that everything would be fine. The petitioner testified that W-M- followed him around the house "like a puppy" all day and night, attempting to convince the petitioner to have intimate relations. The petitioner stated that the harassment became so intolerable that, once he was able to find a part-time job, he begged his employer to work for no pay, just so that he could be away from W-M-. According to the petitioner, W-M- eventually told him that if he refused to have intimate relations with her, she would "choose one hundred men to punish by having sex with them without condoms."

The petitioner also testified that both he and his daughter suffered both physical and emotional abuse. He also testified that W-M- threatened to have him deported for marriage fraud, and told him she would not sign his adjustment of status application unless he paid her \$200,000. The petitioner stated that when he refused to pay her the money, W-M- told him that when she met him in 2004 she thought he was rich, and that had she known he was not, she would have married a different man from Nigeria.

The petitioner also stated that W-M- “systematically emptied my bank account,” that she wrote bad checks, and that she failed to pay bills even though he gave her money to pay those bills. He also stated that W-M- went to his place of work and, without his consent, collected his paycheck, cashed it, and kept his wages for herself. According to the petitioner, when he confronted her, W-M- told him to leave her home, forcing him to live with neighbors.

The petitioner testified that, after he moved in with neighbors, W-M- filed a restraining order, which forbade the petitioner from going near W-M-, her parents, or her friends. The petitioner stated that, in his opinion, W-M- filed for the restraining order as a way “of blocking any attempt on my part to defend myself against her attacks.”

In closing, the petitioner testified that W-M- made his life, as well as the life of his daughter, “extremely intolerable.” He stated that “[h]er attacks are unprovoked and endless”; that he lives in fear of her attacks; that he is “completely confused and emotionally exhausted by her behavior”; that W-M- “is checking my every movement constantly, making it nearly impossible to live free and peacefully”; that he withdrew his daughter from school because he is afraid that W-M- “will go there and hurt her”; and that he now lives “with the fear that I have been infected with the deadly AIDS virus.” According to the petitioner, W-M- “knowingly and intentionally set out to infect me with this disease,” and that W-M- “has surely delivered me a death sentence.”

The petitioner also submitted affidavits from [REDACTED] and [REDACTED] at the time he filed the petition. In his February 27, 2007 affidavit, [REDACTED] stated that the petitioner called him from jail in February 2007, and told him that he had been arrested for violating a restraining order because he had attended the couple’s church. In his February 28, 2007 affidavit, [REDACTED] stated that the petitioner had told him that W-M- slapped him on several occasions for simply expressing his opinion on a number of things. He also stated that the petitioner had told him that W-M- was infected with HIV, and that he was afraid to have intimate relations with her. Finally, he testified that the petitioner had told him that W-M- had told the petitioner that if he did not continue having intimate relations with her, he should pay her \$200,000, or else she would not sign his permanent residency application. The AAO notes that [REDACTED] did not sign either of his affidavits.

[REDACTED] submitted two affidavits dated February 28, 2007. In her first affidavit, she described an occasion on which W-M- visited her home and told her that she had been having an extramarital affair with a married man. [REDACTED] stated that W-M- had told her that although the petitioner was extremely clean and attentive, he would not have intimate relations with her, so “she was going to do what she had to do.” [REDACTED] stated that she asked W-M- about the value she placed on her marriage, but that W-M- replied that because she had learned that the petitioner did not possess the financial resources that she had originally thought he had, “she was going to do her thing.” In her second affidavit, [REDACTED] stated that, on one occasion, W-M- called her, and told [REDACTED] that she needed advice. According to [REDACTED] W-M- came to her home and told her that “she had done something wrong.” [REDACTED] testified that W-M- told her that she had beaten the petitioner’s daughter. Because the abuse had left visible marks, school personnel

contacted DFS, which had conducted an investigation. ██████████ testified that she told W-M- that what she had done was wrong. The AAO notes that ██████████ did not sign either of her affidavits.

In his May 30, 2007 request for additional evidence, the director found the petitioner's submission insufficient. The director found that the August 15, 2006 bank statement provided by the petitioner did not indicate that W-M- had access to the account, that she withdrew money, or that she had bounced any checks. The director requested a copy of the DFS report and any related documentation regarding the alleged investigation into whether W-M- had abused the petitioner's daughter. The director also requested medical records or other documentary evidence to establish that W-M- has HIV or AIDS. The director stated that although the petitioner stated that he feared having been infected with HIV or AIDS, there was no evidence in the record that he had ever been tested. The director requested evidence that the petitioner had been tested and, if he had not been tested, to submit an explanation as to why he had not been tested. The director also requested further evidence or testimony regarding the petitioner's claim of abuse.

Counsel responded to the director's request for additional evidence on July 27, 2007. In his July 23, 2007 letter, counsel notified the director that he had just been retained by the petitioner, and requested that he be granted an additional 60 days in which to submit a response. In his August 14, 2007 NOID, the director repeated his earlier requests. Counsel responded on September 14, 2007, and submitted additional evidence.

In his September 13, 2007 statement, the petitioner repeated the assertions of his earlier affidavit. He also stated that W-M- told him that if he did not have intimate relations with her, he had to give her money in order to make her happy. He stated that W-M- knew he had no car with which to drive to his job, so W-M- began driving him to work with the understanding that the ride to work was to be exchanged for intimate relations. However, the petitioner was soon able to arrange a ride to work with a neighbor.

The petitioner also stated that W-M- slapped him, for no reason, on at least two separate occasions. He also stated that W-M- coerced him into establishing "various new businesses" in both the United States and Nigeria. He stated W-M-'s son threatened to kill him if he hit W-M-.

The petitioner testified that he has been tested for HIV, and that he tested negative. However, the petitioner stated that "the harm is already done," and that returning to Nigeria is now unthinkable, as "[t]he stigma, shame, and social taboo associated with HIV and AIDS in Nigeria is such that my daughter and I will be ostracized and possibly killed if it became known."

In his September 4, 2007 affidavit, ██████████ stated that the petitioner appeared to have trouble "just getting out of the house" and, on one occasion, asked ██████████ whether women in the United States were allowed to strike their husband in the face. ██████████ reported that he advised the petitioner that, in the United States, such actions are considered spousal abuse. ██████████ testified that the petitioner told him that W-M- did not allow his daughter to eat any food in

the house unless W-M- gave her approval. ██████████ stated that the petitioner told him that if his daughter ate food without W-M-'s approval, W-M- would physically abuse the petitioner's daughter. ██████████ also stated that petitioner told him that he was only allowed to eat food in the house that he had purchased himself. ██████████ also stated that the petitioner told him that W-M- picked up the petitioner's paycheck each week and deposited most of it into her own account, rather than into the petitioner's. As such, the petitioner overdrew his checking account. According to ██████████ the petitioner "was really upset by this so he began to find a way to get his check himself with the help of some co-workers." ██████████ also stated that W-M- called the police and claimed that the petitioner had been abusing her.

In her September 7, 2007 affidavit, ██████████ stated that W-M- told her that she had physically abused the petitioner's daughter. She also stated that W-M- told her that she was having an extramarital affair with a married man. ██████████ stated that the petitioner's daughter told her that W-M- had been very mean to her; that W-M- took her to a local juvenile detention center and told her that she would take her there if she was bad; that after falling asleep in the car after being told not to do so by W-M-, W-M- stopped the car on the interstate and made her get out; that W-M- beat her and made her do 100 squats after getting a low score on a school assignment; and that W-M- made her clean the entire house.

Counsel also submitted a psychological evaluation from ██████████, a clinical psychologist. In her August 22, 2007 evaluation, which was based upon two interviews with the petitioner and one interview with his daughter, ██████████ stated that the petitioner was suffering from "notable emotional distress" consistent with post traumatic stress disorder (PTSD), and recommended that the petitioner seek psychotherapy. ██████████ discussed the petitioner's shock and emotional devastation when he learned that W-M- was HIV positive. ██████████ testified that the petitioner told her that he had called his village chief in Nigeria about the matter, and that his village chief had advised him to never tell anyone in Nigeria that he had married someone infected with HIV.

██████████ also testified that the petitioner told her that W-M- had slapped him "on a couple of occasions"; that W-M- emotionally controlled him by making her driving him to work contingent on having intimate relations; that W-M- demanded that the petitioner enter into various businesses using dishonest tactics; that W-M- was deceitful with money; that W-M- threatened to kill him if he told her family that she was infected with HIV; and that W-M- physically abused his daughter.

Counsel also submitted documentation indicating that the petitioner was screened for HIV on September 5, 2007, and that he tested negative for the infection.

In his November 21, 2007 denial of the petition, the director noted that the petitioner had failed to submit, despite having been specifically requested to do so, documentation regarding the DFS investigation of W-M-'s alleged abuse of the petitioner's daughter and documentation of the petitioner's claim that W-M- is HIV positive, nor had he made any explanation of his failure to do so. The director stated that it appeared as though ██████████ report was completed for the sole purpose of supporting the petitioner's claim of abuse.

In his December 28, 2007 appellate brief, counsel states that “privacy rights make it impossible for the petitioner to obtain the medical records of the abuser,” and that although the petitioner has tested negative for HIV infection, “there is a publicly held view, supported by medical evidence, that the incubation period of HIV or AIDS is about 2-10 years.”

Counsel also submitted a letter from the DeKalb County Department of Family Services stating that the agency’s investigation into the allegations of abuse involving the petitioner’s daughter in October 2006 found those allegations to be unsubstantiated. However, counsel asserts that this letter is “bogus,” and states that the individual who wrote this letter “is either incompetent or hiding something in order to please [W-M].”

Counsel also submits a December 19, 2007 letter from [REDACTED] and [REDACTED], who counsel states the petitioner has hired in order to contest W-M-’s July 12, 2007 “Petition for Annulment.” [REDACTED] and [REDACTED] state that they are “preparing an Answer to that petition,” and that they expect their “litigation” to cover “Discovery Material and Requests which will, in part, be regarding the alleged allegations of the HIV-Infection of the wife.”

Upon review of the entire record of proceeding, the AAO agrees with the director’s determination that the petitioner has failed to establish that W-M- subjected him to battery or extreme cruelty. In arriving at this conclusion, the AAO first notes inconsistencies in the petitioner’s testimony. For example, in his March 1, 2007 affidavit the petitioner specifically stated that after he learned of W-M-’s HIV infection ten days after his arrival in the United States, they stopped having intimate relations:

From that day forth, I refused to touch [W-M-], I could not touch her, even as she assured me that everything would be ok.

However, in his later testimony, as well as his testimony to [REDACTED] the petitioner explained how W-M- made driving the petitioner to his job contingent upon his agreeing to have sexual relations with her. Although the petitioner stated that he was eventually able to get a ride to work from friends, the fact that he was initially dependent upon W-M- for transportation to his job indicates that they did in fact have a sexual relationship after the day that the petitioner learned of M-W-’s HIV infection. This inconsistency in the petitioner’s testimony undermines the credibility of that testimony.

Having highlighted this inconsistency, the AAO turns next to the petitioner’s specific claims of abuse. Although the record contains testimony that W-M- slapped the petitioner on two occasions during their marriage, that testimony is insufficiently detailed to establish the petitioner’s claim. The petitioner’s testimony lacks detailed, probative information regarding the circumstances surrounding those instances of alleged physical abuse.

Nor is the petitioner's testimony with regard to W-M-'s purported economic abuse of the petitioner supported by the record. As noted by the director in his NOID, the single bank statement submitted by the petitioner failed to establish that he had ever overdrawn his account as claimed. Nor did the petitioner provide detailed testimony beyond his general assertions regarding the "various new businesses" that W-M- "coerced [the petitioner] to establish." Nor is it clear how W-M- was able to obtain the petitioner's paycheck, without his knowledge or permission, cash it, and deposit the money into her own account.

Nor does the record of record as it is currently constituted support the petitioner's assertion that W-M- physically abused his daughter. As noted previously, on appeal counsel submitted the letter from the DeKalb County Department of Family Services the director had requested repeatedly. However, that letter stated that the agency's investigation into the allegations of abuse involving the petitioner's daughter in October 2006 found those allegations to be unsubstantiated. Counsel's assertion that this letter is "bogus" rests on three allegations: (1) that the petitioner had a difficult time obtaining this letter; (2) that the DeKalb County Public School System initiated the complaint, but that it did not receive a copy of "the report"; and (3) that the letter was not signed by a supervisor "as required by their own protocol." However, there is no evidence of record to substantiate counsel's allegations. There is no evidence of record indicating that the petitioner "had a difficult time" obtaining this letter, as the letter does not indicate that the DeKalb County Public School System initiated the complaint. Even if the DeKalb County Public School System did initiate the complaint, there is no evidence to indicate that they did not receive a copy of "the report," and there is no evidence of record, beyond counsel's assertion, to establish that this letter was issued outside of the agency's normal protocol. Accordingly, this letter does not serve as evidence that the petitioner's daughter was abused by W-M-.

Nor do the affidavits of [REDACTED] and [REDACTED] establish that the petitioner was abused by W-M-, as their testimony appears to be based upon the petitioner's description of events to them. Nor does their testimony establish that W-M- abused the petitioner's daughter, as the DeKalb County Department of Family Services' investigation into the allegations of abuse involving the petitioner's daughter in October 2006 found those allegations to be unsubstantiated.

With regard to the petitioner's anguish over his exposure to HIV, the AAO notes first that, although the petitioner claims to have been devastated by such exposure, he was not tested for infection until September 2007, nearly a year and a half after his first exposure, and then only in response to the director's inquiry. Further, he tested negative for HIV infection. Nor is there any evidence of record, beyond the petitioner's testimony, that W-M- is HIV positive. Although counsel submits the above-referenced letter from [REDACTED] and [REDACTED], in which they state that they are going to prepare an answer to W-M-'s petition to annul the marriage, the AAO finds this letter insufficient. The director first requested some sort of documentary evidence regarding W-M-'s medical condition on May 30, 2007, and the December 19, 2007 letter from [REDACTED] and [REDACTED] detailing their strategy for obtaining such information is insufficient. Given the inconsistencies in the petitioner's testimony discussed previously, the AAO will not accept the petitioner's testimony with regard to W-M-'s medical condition without documentary evidence.

Finally, the AAO turns to the evaluation of [REDACTED]. The AAO finds that this evaluation fails to establish that the petitioner was subjected to battery or extreme cruelty. First, the AAO notes that [REDACTED] findings are based upon the testimony of the petitioner, whose credibility has been called into question. Second, it appears as though the petitioner visited [REDACTED] for the sole purpose of obtaining documentation to bolster his immigration petition, as the record reflects no mental health treatment of any kind prior to the director's issuance of the NOID. Third, although the record contains documentation that the petitioner has obtained medication since visiting [REDACTED], there is no evidence that he has followed through on her recommendation that he seek psychotherapy to deal with the PTSD she described. Fourth, although the input of any mental health professional is respected and valuable, [REDACTED] letter is based upon two interviews with the petitioner. The record fails to reflect an ongoing relationship between a mental health professional and the petitioner. Moreover, the conclusions reached in the submitted evaluation, being based on two interviews, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value. As she only interviewed the petitioner's daughter on one occasion, [REDACTED] findings with regard to her are even more speculative.

Upon review of the entire record of proceeding, the AAO agrees with the director's determination that the petitioner has failed to establish that W-M- subjected him to battery or extreme cruelty. First, the AAO incorporates here its previous discussion of the inconsistencies contained in the petitioner's testimony, which undermines the credibility of his testimony. Second, although the AAO does not dispute that W-M-'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 W-M-'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 (9<sup>th</sup> 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. 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 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 March 2004 and ending in March 2007).

In his November 21, 2007 denial, the director noted that although the record contains a criminal background check issued by the Central Criminal Registry of Nigeria on December 2, 2005, the petitioner had failed to submit an updated background check, as had been requested. The director noted further that, although all documentation regarding W-M-'s protective order against the petitioner had been requested, the petitioner had failed to submit it.

On appeal, the petitioner submits a criminal background check issued by the State of Georgia on December 18, 2007, which states that no criminal history for the petitioner was found. However, the record nonetheless indicates that the State Court of DeKalb County, Georgia, issued a protective order against the petitioner on February 8, 2007, in effect from February 20, 2007 through February 19, 2008. It appears as though he violated that order, as a May 15, 2007 court document lists his offense as violating a temporary protective order. On May 15, 2007, the case was placed on a consent hold until December 3, 2007, and the petitioner was placed on probation. On November 28, 2007, the Assistant Solicitor General of DeKalb County moved that the petitioner's violation case be nolle prosequi, as the defendant had complied with all terms of the May 15, 2007 consent hold. The judge approved the Assistant Solicitor General's motion on December 3, 2007.

On appeal, counsel characterizes the judge's December 3, 2007 order of nolle prosequi as the "final disposition record on the temporary restraining order filed by his spouse." Counsel is incorrect. The order of nolle prosequi is not the final disposition of the protective order; it is the final disposition of the later case against the petitioner for *violating* the protective order. The order of nolle prosequi did not terminate the protective order; it merely terminated the case against the petitioner for having *violated* the protective order.

Regardless, the petitioner has still failed to submit all documentation in connection with the temporary protective order. In his September 4, 2007 testimony, [REDACTED] stated that police officers came to the home of R-W- and the petitioner several times in January and February 2007. It would appear as though a police report would have been made for each incident. None are submitted. At minimum, given that the petitioner was specifically charged with violating a protective order, there should have been a police report regarding that incident. However, the record does not contain a single police report. The petitioner has failed to establish his good moral character during his residence in the State of Georgia.

The record also contains a criminal background check issued by the Central Criminal Registry of Nigeria on December 2, 2005. However, the record indicates that the petitioner lived in Nigeria until April 2006. As the petitioner fails to submit a criminal background check for the period between December 2, 2005 and his departure from Nigeria, the petitioner has failed to establish his good moral character during his entire residence in Nigeria.

Although the record contains a copy of an application for a Virginia criminal background check, a copy of an application for a criminal background check does not satisfy 8 C.F.R. § 204.2(c)(2)(v).

For all of these reasons, the petitioner 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.

**Conclusion**

The AAO agrees with the director's determination that the petitioner has failed to establish that his wife subjected him to battery or extreme cruelty, and that he is a person of good moral character. He is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.