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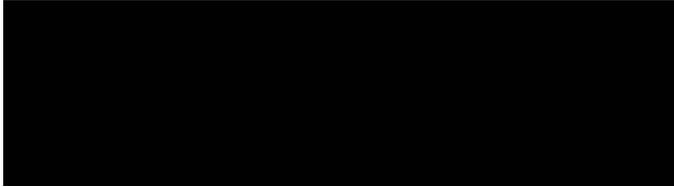
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 07-162-50092

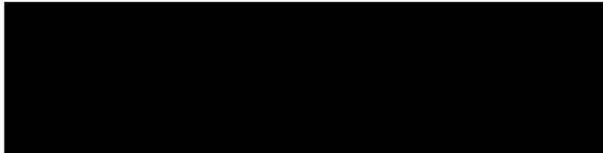
Office: VERMONT SERVICE CENTER

Date: **MAY 21 2009**

IN RE: Petitioner: [REDACTED]

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

ON BEHALF OF PETITIONER:



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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as having been battered or subjected to extreme cruelty by his U.S. citizen spouse. The director denied the petition finding that the petitioner failed to establish that he had been battered or subjected to extreme cruelty by his spouse during their marriage and that he entered into his marriage in good faith. The petitioner, through counsel, submits a timely appeal.

We concur with the director's determination that the petitioner has not established the requisite battery or extreme cruelty and that he entered into his marriage in good faith. Counsel's claims and additional evidence on appeal do not overcome the grounds for denial of the petition. Nonetheless, the case must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Eligibility for Immigrant Classification Under Section 204(a)(1)(A)(iii) of the Act

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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 regulation at 8 C.F.R. § 204.2(c)(1) provides the following guidance regarding relevant eligibility requirements:

(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 under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * * *

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

Procedural History and Pertinent Facts

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of India who entered the United States on November 25, 2005 with a K-3 non-immigrant visa as the spouse of a U.S. citizen. The petitioner married M-Y-¹ a U.S. citizen, in India on April 15, 2005; the petitioner claims that the marriage was arranged by M-Y-'s adoptive father, and the couple communicated via the internet before M-Y- traveled to India to meet the petitioner in person shortly before they were married. Their divorce was finalized on September 10, 2008 in New York.

The petitioner, through counsel, filed the instant I-360 Petition on May 14, 2007. Relevant documents submitted at that time included affidavits from acquaintances in India and in the United States attesting to the petitioner's good character; copies of what appear to be four on-line conversations between the petitioner and M-Y-, though neither the print date nor the date of the communications are provided; a copy of the couple's marriage certificate and marriage invitation; photographs of their wedding; copies of three greeting cards, undated and/or unsigned; and the petitioner's affidavit, dated May 11, 2007, in which he describes the problems in his marriage, claiming that "[I]n March 2006 I found out that my wife has sexual relations with another man and she sexually chat [sic] online with that man and they show their private body parts to each other. . . . [and] due to the sexual and promiscuous relationship of my wife with other person during the marriage I have been subjected to extreme cruelty, emotionally abused and battered. . . . [and] [h]er extra marital relations caused me lot of mental anguish and emotional distress and abuse."

Finding that the evidence was insufficient to establish the petitioner's eligibility, on January 11, 2008 U.S. Citizenship and Immigration Services (USCIS) issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty perpetrated against the petitioner by his spouse and his good faith marriage. In response, on April 7, 2008 the petitioner submitted copies of previously submitted documents; his own detailed affidavit, dated April 5, 2008; additional affidavits from his parents and acquaintances; and a psychological evaluation dated April 3, 2008 by [REDACTED]. In his new affidavit, the petitioner adds to his prior claim that he and his wife lived with her parents while they resided together from his arrival on November 25, 2005 until he left their home on June 30, 2006 and, during that time, his father-in-law abused him. He claimed that his father-in-law told him that since he was not working he should take care of the apartment building, which he owned; called him names, would not let the petitioner look for work in the computer profession, cursed, insulted, demoralized and abused him by saying that he was not competent enough to find any work in the United States so he should only perform household work, and threatened to call the police and immigration and have him deported. He also added that his wife would disappear from the house for hours without any reason, and in March 2006, he found evidence on her computer that she had been engaging in on-line sex, which he described as "an incestuous extramarital relationship" that was very traumatic and hurtful to him.

¹ Name withheld to protect individual's identity.

He claimed that after he found out about her extramarital relations, his wife became “more abusive and said something bad to her parents” about him; and everyone in the household became more abusive and constantly threatened him to leave the house and go back to India or they would have him arrested and deported.

The director found that the petitioner had failed to establish his eligibility, noting that the statements of the petitioner and others described common marital incompatibilities, but that marital tensions and incompatibilities, which may even be at the root of the breakup of a marriage, do not, by themselves, constitute extreme cruelty. The director also found insufficient evidence of a good faith marriage. The director denied the petition accordingly.

The petitioner, through counsel, submits a timely appeal along with counsel’s brief. He also submits (1) a second statement from [REDACTED] dated July 30, 2008, explaining that, based on his testimony alone, the petitioner was the subject of extreme cruelty through both psychological attacks and economic coercion; (2) a letter from [REDACTED], dated July 7, 2008, stating that the petitioner started psychotherapy services with her on June 23, 2008 and has had three sessions with her; (3) a third affidavit from [REDACTED] dated July 15, 2008, in which he claims to have known the petitioner since 2006 when they met at a spiritual congregation, he gave the petitioner shelter for two weeks after his wife kicked him out of the house in July 2006 and later employed him until May 2007; (4) a statement from [REDACTED] dated June 29, 2008, confirming that he performed the petitioner’s marriage ceremony in New Delhi and that the marriage was attended by approximately 200 guests, friends and relatives from both sides; and (5) a copy of the petitioner’s April 5, 2008 affidavit, which was submitted previously. In his brief, counsel asserts that the petitioner has provided all the proof available of his wife’s adulterous behavior; “traumatic effect” is established by [REDACTED] evaluation and follow-up report “establishing extreme cruelty inflicted on the petitioner by his wife and her parents through psychological attacks and economic coercion”; and [REDACTED] report clearly states that due to his experiences with his marriage the petitioner suffers from “major depression, isolation, loss of appetite, insomnia, irritability, severe trauma and fear for his life.” Counsel also claims that USCIS erred in equating marital tensions and incompatibilities to marital infidelity, that the petitioner “felt abused, violated, humiliated, cheated and drained,” and that “[t]he consequences of the petitioner’s wife’s extramarital and perverted acts are overwhelming.”

Upon review of all of the evidence in the record, for the reasons described below, we concur with the director’s finding that the petitioner failed to establish his eligibility by a preponderance of the evidence.

Battery or Extreme Cruelty

As evidence that he was subjected to battery or extreme cruelty by his now former wife, the petitioner submitted two of his own statements, as well as the affidavits described above and reports by the two professionals noted. As no one witnessed any of M-Y-’s actions, all of the claims and the assessment of how such treatment ultimately affected him must necessarily be

based on the petitioner's descriptions. However, we find his descriptions, both in his affidavits and as explained by others, not entirely credible. In his original statement, the petitioner made only one claim, that due to the sexual and promiscuous relationship of his wife with another person during their marriage, he had been subjected to extreme cruelty, emotionally abused and battered and that his wife's extramarital relations caused him much mental anguish and emotional distress and abuse. He wrote a second statement in response to the RFE in which he claimed that his father-in-law forced him to do menial work around the house and criticized him and called him names; regarding his wife's behavior, he added only that after he found out about her extramarital relations, his wife became "more abusive and said something bad to her parents" about him; and everyone in the household became more abusive and constantly threatened him to leave the house and go back to India or they would have him arrested and deported. He provides no additional information regarding any specific act by his wife and provides details only about her extramarital affair. However, the account of his marital difficulties described by [REDACTED] and [REDACTED] contain additional information, including that the petitioner's wife initially refused to have sexual relations with him when they were married, and that once in the United States "she continued to limit sexual relations or egress out of the house," behavior that the petitioner did not allege in his own affidavits. He has consistently asserted that it was his wife's extra marital relations that caused him mental anguish and emotional distress, and he equates his wife's acts of infidelity with abuse and extreme cruelty.

The evaluation by [REDACTED] and the letter by [REDACTED] indicate that the petitioner suffered due to his wife's infidelity, the disrespectful and unkind treatment by her family and the ultimate need to find alternate living arrangements and to be on his own after only eight months in the United States. While we do not doubt their expertise or doubt their conclusions that the petitioner suffers from depression we do not find that the marital problems the petitioner described amounted to "extreme cruelty" by his wife. We note, however, that his wife's infidelity, the ultimate failure of his marriage, his fears regarding potential loss of immigration status and the problems he associates with a return to India form a reasonable basis for his depression.

Regarding the affidavits submitted in support of the petitioner's claim of abuse by his wife, we note that none of the petitioner's friends or family members indicated personal knowledge of any form of mistreatment by the petitioner's wife or in-laws. They all reported what was told to them by the petitioner; and, as noted above, the petitioner's accounts have been found to lack credibility to the extent that he added different details at various times. Moreover, in several cases, the language in each of the affidavits is identical: the affidavits by the petitioner's mother and father are identical; the affidavits of [REDACTED] and [REDACTED], all dated April 4, 2008, contain identical language describing how the petitioner was treated by his father-in-law. As different affiants would not provide the exact same language, it is not clear who provided the information, and doubt is cast on the credibility of all of the statements. The third affidavit from [REDACTED], dated July 15, 2008 and submitted on appeal, is described above; it also includes the exact same language as his prior affidavit, with some additional language, and raises concerns regarding the authenticity of the statements submitted on the petitioner's behalf.

The lack of specific and detailed descriptions by the petitioner of any abuse by his wife, the questions raised regarding affidavits submitted in his support, and the lack of credible affidavits or any other credible information regarding his wife's actions diminish the credibility of the petitioner's claims. While we find that the petitioner has made a credible claim that his wife may have had an extramarital affair, and that this is unacceptable to the petitioner, we do not find that such behavior amounts to extreme cruelty. No other relevant evidence is included in the record to establish that the petitioner was abused by his wife.

The descriptions of M-Y-'s actions 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 general statements 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 M-Y-'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.

Accordingly, the petitioner has failed to establish that he was battered or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

Evidence of good faith at the time of marriage may include 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 evidence include police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. 8 C.F.R. § 204.2(c)(2)(vii).

The petitioner explained that, other than proof of his marriage and wedding ceremony, he did not have documents to show a good faith entry into marriage. He explained that the couple resided together for less than a year; they resided with and were supported by his wife's parents; and they did not work or pay taxes. While the lack of certain documents is, thus, understandable, the record also lacks specific information from the petitioner regarding the couple's relationship and affidavits from individuals with personal knowledge of their relationship. As described by the petitioner in his own affidavit or in information provided to ██████████ the couple had a relationship lasting at least two and a half years: their marriage was arranged by M-Y-'s parents in 2003; the couple communicated long distance for two years before M-Y- traveled from the United States to India for their marriage on April 15, 2005 and returned to the United States shortly thereafter; and they later resided together in the United States from November 25, 2005 until June 30, 2006. Despite this reported relationship, although the record contains affidavits from friends who attest to the petitioner's good moral character, there are no credible statements by anyone who knew the petitioner before he was married claiming to have any information about his plans for a future with his wife. As noted above, the statements from his parents lack credibility; they also fail to address their son's stated motives in marrying or his feelings for his

wife. The petitioner himself stated only, “we married on April 15, 2005 in New Delhi India and the marriage was entered into in good faith with the presence of our parents and all the family members and friends.” He provided proof of the marriage and photographs of a well-attended festive ceremony and celebration. He also provided copies of what appears to be four separate on-line chats with M-Y-, apparently some before and others after their wedding, but they lack dates. During these chats, the petitioner states that he loves M-Y- and expresses concern for her well-being; he responds affirmatively to M-Y-’s question whether they will have a happy and interesting life; and he states that he will try his best to keep her happy always. There is no other relevant statement. As there is no indication that the documents were printed from actual conversations and they lack dates, they have minimal evidentiary value.

The photographs show that the couple was married as described by the petitioner, and the record shows that the petitioner came to the United States to join his wife in November 2005. However, a marriage ceremony is not evidence of a good faith marriage. The record lacks any description or reference to the couple’s relationship, either before or during their marriage, as evidence that the petitioner entered into his marriage in good faith; and the petitioner offers no details regarding his intent when he entered into his marriage. The conversations described above offer little substantive information. While the petitioner and others describe the problems in the couple’s relationship, neither he nor others provide any credible details regarding his feelings for his wife or his plans for a future or any details surrounding the couple’s courtship or wedding. The record lacks documentary evidence of a good faith marriage; it also lacks relevant affidavits of persons with personal knowledge of the relationship.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the lack of probative detail and substantive information in the petitioner’s and others’ testimony regarding the couple’s engagement and shared experiences significantly detract from the credibility of his claim.

Accordingly, the petitioner has failed to establish that he entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

For the reasons noted above, the AAO concurs with the director’s decision that the petitioner has failed to establish by a preponderance of the evidence that he was battered or subjected to extreme cruelty by his U.S. citizen spouse and that he entered into his marriage in good faith. Consequently, he is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The petition is not approvable for the above stated reasons, with each considered as an independent and alternative bar to approval.

Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID as required under former 8 C.F.R. § 204.2(c)(3)(ii)(2007). While it is no longer a regulatory requirement for petitions filed on or after June 18, 2007, a NOID is required in this case, as it was filed on May 14, 2007.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn; however, the petition is currently not approvable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.