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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  
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Services

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FILE:

[REDACTED]  
EAC 07 252 50031

Office: VERMONT SERVICE CENTER

Date:

SEP 08 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that he resided with his wife, married her in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and a copy of an affidavit previously submitted.

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

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

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

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

(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.

\* \* \*

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

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

*Evidence for a spousal self-petition*

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

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

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

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children

born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Romania who married C-L-<sup>1</sup>, a U.S. citizen, on December 9, 2004, in Romania. C-L- subsequently filed a Form I-129F, Petition for Alien Fiancé(e), and a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which were approved on June 23, 2005 and July 20, 2005, respectively. The petitioner was admitted into the United States on October 16, 2005, as a K-3 nonimmigrant. On November 9, 2005, a Form I-140, Immigrant Petition for Alien Worker, was filed on the beneficiary's behalf, which was denied on July 19, 2007, due to abandonment.

The petitioner filed the instant Form I-360 on September 4, 2007, and on December 13, 2007, the petitioner filed a related Form I-485, Application to Register Permanent Residence or Adjust Status. On September 4, 2008, the director issued a Request for Evidence (RFE) of the requisite qualifying relationship, joint residency, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner, through counsel, timely responded on November 26, 2008 with additional evidence. On March 18, 2009, the director denied the petition because the petitioner did not establish that he resided with his wife, married her in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage. Counsel timely appealed.

On appeal, counsel explains or discounts certain factual inconsistencies and discrepancies cited by the director. Counsel's claims and the previously submitted evidence fail to establish that the petitioner resided with his wife, married her in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage.

#### *Joint Residence*

The record contains the following evidence relevant to the petitioner's claim that he resided with his wife:

- The petitioner's affidavit dated August 27, 2007, and two affidavits, both dated November 24, 2008;  
The petitioner's Form G-325A, Biographic Information, on which he stated that he resided at [REDACTED] in New York City from December 2006 until he signed the form on December 7, 2007;
- The petitioner's Form G-325A, Biographic Information, filed on January 8, 2007 with his second I-485 application, on which he stated that he relocated from Romania in December 2005 and resided in an apartment at [REDACTED], in Astoria, New York from December 2005 to the present;
- The petitioner's Form G-325A, Biographic Information, on which he stated that he resided in

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

- an apartment in the city of Pitesti in Romania when he signed the form on January 31, 2005;
- Copies of the petitioner's W-2 form and federal and state income tax returns for 2006, reflecting the "[redacted]" address in New York City and his filing status as "single";
- A copy of the petitioner's New York State "Learner Permit" issued on August 2, 2006, reflecting the "[redacted]" address in Astoria, New York; and
- An assessment from [redacted] dated August 27, 2007, who states that the petitioner reported that he arrived in New York in December 2005, after a friend loaned him the money for the trip.

On the Form I-360, the petitioner stated that he resided with his wife from the date of their marriage on December 9, 2004 until December 24, 2006, and listed their last joint address as: [redacted] in Cheney, Washington. As noted by the director, the petitioner submitted conflicting information in his November 24, 2008 affidavit, in which he asserts that he lived with C-L- intermittently at the "[redacted]" address in Cheney, Washington from October 2005 to July 2006, whereupon he relocated permanently to New York City. The petitioner's claim in his November 24, 2008 affidavit that he relocated from Cheney, Washington to New York City in July 2006 also conflicts with the following: the Form G-325A, Biographic Information, on which he stated that he resided at [redacted] in New York City from December 2006 until he signed the form on December 7, 2007; the August 27, 2007 assessment from [redacted], who states that the petitioner reported that he "[left] the relationship after two weeks in the United States" and that he arrived in New York in December 2005, after a friend loaned him the money for the trip; the Form G-325A, Biographic Information, that he filed on January 8, 2007 with his second I-485 application, on which he stated that he relocated from Romania in December 2005 and resided in New York from December 2005 to the present; and the petitioner's affidavit dated August 27, 2007, in which he states that approximately six months earlier, he suffered a nervous breakdown and a friend and his wife took him in their [New York] apartment.

As stated by the director in his decision, none of the evidence submitted by the petitioner, including the photograph that was allegedly of the petitioner's living room in Cheney, Washington, the Master Card billing statement that was printed on March 13, 2005, which is several months prior to the petitioner's admission into the United States, and the Master Card mailers containing the names of the petitioner and C-L-, establishes that the petitioner and C-L- resided together. Moreover, the I-140, Immigrant Petition for Alien Worker, filed on the petitioner's behalf on November 9, 2005, reflects a California address for the petitioner, which, as noted by the director, conflicts with all of the petitioner's claims listed above. In addition, the social worker who assessed the petitioner indicated that the petitioner "demonstrated strength [by] leaving the relationship after two weeks in the States," which conflicts with the petitioner's claim on the petition that he resided with his wife from the date of their marriage on December 9, 2004 until December 24, 2006. On appeal, counsel asserts that that "[t]he Service did not take into consideration [the petitioner's] homeless state of mind after he was kicked out of the marital residence by his wife." The petitioner, however, has not provided detailed, probative testimony regarding his residence with his wife and has not sufficiently explained the numerous inconsistencies discussed above. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with C-L-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Good Faith Entry into Marriage*

In his August 27, 2007 affidavit, the petitioner states that in 2004 he met C-L- in a chat room on the Internet when he was living in Romania and working as a physical education teacher. The petitioner reports that the relationship soon became “very intense,” as they “exchanged emails and instant messages, sometimes for eight hours in a row.” The petitioner states that when C-L- went to visit him in Romania, they fell in love instantly and “wanted to get married as soon as possible and spend the rest of [their] lives together.” The petitioner explains that he was naïve and was not aware that C-L- was addicted to heroin.

In his two November 24, 2008 affidavits, the petitioner provided no further relevant information

In his decision, the director noted that none of the evidence of record establishes that the petitioner entered into his marriage in good faith. The director pointed out that the petitioner claimed “single” status on his 2006 tax returns, thereby denying that he was even married to C-L-. The director again discussed the evidence already mentioned in the preceding section, including the photograph that was allegedly of the petitioner’s living room in Cheney, Washington, the Master Card billing statement that was printed on March 13, 2005, which is several months prior to the petitioner’s admission into the United States, and the Master Card mailers containing the names of the petitioner and C-L-. The director also mentioned the billing statement for a woman’s cubic zirconia ring from PalmBeachJewelry.Com, addressed to the C-L- at the “Cheney, Washington” address, with a May 17, 2005 shipping date. In his November 24, 2008 affidavit, the petitioner states that he gave this ring to C-L- to mark the six-month anniversary of their marriage. As pointed out by the director, however, the billing statement is in C-L-’s name, which indicates that she paid for it rather than received it as a gift. It is noted that neither counsel nor the petitioner addresses the director’s determinations on appeal. Rather, counsel claims that the petitioner is unable to provide any documentation such as utility bills or a lease because he and C-L- lived in his parents’ house in Romania and in C-L-’s ex-husband’s house in the United States, and that he did not know how to obtain a driver’s license or a cellular phone. Counsel also inexplicably claims that “the episodes of the unhappy marriage only proves [sic] the good faith.”

Counsel also claims that the issue of bona fide marriage was already adjudicated by the Immigration Officer who granted the petitioner’s K-3 visa. Counsel is mistaken. Section 214(d) of the Act states that U.S. Citizenship and Immigration Services (USCIS) *shall* approve the Form I-129F, Petition for Alien Fiancé(e), when a petitioner submits evidence to establish that he/she and the beneficiary have met within the two-year period preceding the filing of the Form I-129F, have a bonafide intention to marry and are legally able and willing to marry within 90 days of the beneficiary’s arrival in the United States. While section 214(d) of the Act stipulates that the petitioner, in this case, C-L-, must establish that he or she and the beneficiary have a bonafide intention to marry, this language is not synonymous with a requirement that a self-petitioner establish his or her good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

On appeal, counsel submits a copy of the previously submitted affidavit, dated July 27, 2005, from

C-L-'s mother, G. L-<sup>2</sup>, who attests to the validity of the petitioner's marriage to C-L-. It is noted that Ms. L-'s affidavit is dated prior to the petitioner's entry into the United States. The record also contains a letter dated August 31, 2005, from \_\_\_\_\_ who identifies herself as a co-worker and close friend of C-L-. \_\_\_\_\_ letter is also dated prior to the petitioner's entry into the United States. Both letters provide primarily general statements, such as "they both share the same sense of humor and have the same desires and goals for the future" and "[t]hey're a great couple, they compliment each other beautifully, have the same core beliefs and values; just really well suited for each other." As both letters were dated prior to the petitioner's entry into the United States, it appears that neither the petitioner's mother nor \_\_\_\_\_ had personally met the petitioner or witnessed any interactions between the petitioner and C-L-. The record also contains a letter, allegedly from the petitioner's stepson, who states, in part, that he enjoyed talking to the petitioner that day, and that he looked forward to playing soccer with him. This letter shows only that the petitioner once talked to C-L-'s son; it does not indicate that they had a close relationship or provide any other indication of the petitioner's intentions in entering the marriage. In addition to the affidavits and the letter, the record also contains photographs of the petitioner and C-L-. While the photographs confirm that the petitioner and C-L- were married and pictured together, these documents alone do not establish the petitioner's good-faith entry into the marriage.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, as discussed above, the petitioner has submitted numerous documents that contradict not only the information that he provided on the I-360 petition, namely, that he resided with his wife from the date of their marriage on December 9, 2004 until December 24, 2006, and that their last joint address was: \_\_\_\_\_ in Cheney, Washington, but the documents submitted by the petitioner also contradict each other. The petitioner has not explained or reconciled these inconsistencies. Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding how he met his wife, their courtship, decision to marry, wedding, and shared residences and experiences, significantly detracts from the credibility of his claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Battery or Extreme Cruelty*

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty.

In his decision, the director noted that the record contains many inconsistencies regarding the petitioner's claimed abuse by C-L-. For example, the director pointed out that the record contains substantial evidence, such as medical notes, tax returns, W-2 statements, and employment letters to refute the petitioner's claims that his wife had a heroin addiction. The director also noted that the petitioner's claim in his August 27, 2007 affidavit that he did not know what happened with his wife's pregnancy is contradicted by \_\_\_\_\_; August 31, 2005 letter, in which she states that the

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Name withheld to protect individual's identity.

petitioner “knew [C-L-] was hurting and extremely sad when she miscarried their baby, he was online or on the phone with her constantly for days—he also emailed/IM’d me begging me to help her, be there for her as he was not able to be there to comfort her.” The director finds that the petitioner made a contradictory claim in his November 28, 2008 affidavit about his wife’s miscarriage, in which he stated that “it was true” he was devastated to learn that C-L- had miscarried. The petitioner’s new claim in his November 28, 2008 affidavit also conflicted with [REDACTED] assessment, in which she states that the petitioner reported that “[i]t was unclear whether C-L- lost the baby, had an abortion, or was never pregnant . . .” The director found additional inconsistencies related to the petitioner’s claims of C-L-’s controlling behavior, as the petitioner claims in his August 27, 2007 affidavit that soon after then met in an Internet chat room, they “developed a very intense relationship” and “exchanged emails and instant messages, sometimes for eight hours in a row” and then reported to [REDACTED] that “he was *supposed to* sit by his computer and stay connected to her through the internet or on the phone.” (Emphasis added.) The director also pointed out that the petitioner submitted no substantiating evidence, such as medical or police reports, that the scars on his arm and finger were caused by C-L- hitting him with scissors.

**On appeal, counsel states that C-L- perpetrated extreme cruelty on the petitioner, which is supported by [REDACTED] conclusion that he was a victim of domestic violence.**

In his August 27, 2007 affidavit, the petitioner states that after he married C-L-, she gradually changed, and started bossing him around, and wanted to control his entire life. The petitioner states that after he arrived in the United States, he found out for the first time that C-L- lived in the same house as her first ex-husband and that she worked for her second ex-husband. The petitioner reports that he found out about his wife’s drug addiction from one of her neighbors, and that he realized that her son had tried to tell him about his mother’s drug addiction, but he did not understand. The petitioner states that his wife told him right after they were married that she was pregnant, but that after he arrived in the United States, she did not mention anything about the pregnancy, which caused him “extreme emotional distress.” The petitioner explains that he blames himself for not confronting his wife about her drug addiction, but his mental health was worsening and their relationship was deteriorating. The petitioner states that he was kicked out of the house in the middle of the night and that they tried to resume their relationship several times after she kicked him out. The petitioner explains that he suffered a nervous breakdown, after which his Romanian friend and wife took him in their apartment and cared for him.

In one November 24, 2008 affidavit, the petitioner states that his wife kicked him out of the house many times and that he was so depressed and his judgment impaired that his “memory of the events may not be very accurate.” The petitioner also states that his wife abused him and treated him like her slave. The petitioner submits photographs of his right hand with “scar acquired on October 25, 2005.”

In his other November 24, 2008 affidavit, the petitioner states that a few days before Halloween, his wife wanted him to go out with her, but he did not want to go. The petitioner states that their dispute ended up with his wife hitting him with a pair of scissors.

In his November 24, 2008 affidavit, [REDACTED] states that in December 2005, he found out that the petitioner was living in the United States when he was contacted by the petitioner's sister. Mr. [REDACTED] also states that when he called the petitioner, he found out that he was married to a heavy drug user who was mentally and physically abusing him, that he had no one to help him, and that he was suicidal. [REDACTED] states that he threatened to call the petitioner's mother if he did not come to New York to stay with him and his wife. [REDACTED] states: "[The petitioner] lived with my wife and me for several weeks at the beginning of 2006." As noted by the director, [REDACTED] claim that the petitioner's sister gave him the petitioner's phone number conflicts with [REDACTED] assessment in which she states that the petitioner reported that he called his mother in Romania and "he shared enough for her to suggest that he call a Romanian friend who was living in New York" and that she "obtained the number for him and he called."

In her August 27, 2007 assessment, [REDACTED], states that the petitioner called her and told her that he needed to see her as soon as possible. [REDACTED] states that her assessment is based on three meetings with the petitioner for a total of three hours on July 5, 9, and 25, 2007. [REDACTED] states that the petitioner "appears as a Victim of Domestic Violence" because he felt controlled by C-L- and because she lied to him. [REDACTED] also states that the petitioner "appears to have symptoms of Major Depressive disorder" because the petitioner has experienced symptoms of depression for longer than two weeks. [REDACTED] states further:

Added to this diagnosis, there are some signs of Post Traumatic Stress Disorder though he is missing the two major criteria. ([The petitioner] was NOT ever psychologically or physically threatened with death or serious injury and therefore he did NOT in response feel intense fear, helplessness or horror from any of the events.) (Emphasis in the original.)

[REDACTED] reiterates the petitioner's claims that his wife was a heroin addict and that she was controlling. [REDACTED] also reports behaviors of the petitioner's wife that the petitioner himself does not discuss in any of his affidavits. For example, [REDACTED] states that the petitioner's wife bought him a WEB CAM and she would divorce him if he did not perform sexual acts in front of the camera, and that when he called his wife to tell her that he was moving to New York, she threatened to kill him. Yet the petitioner discusses neither of these incidents in his own statements. It is also noted that Ms. [REDACTED] does not mention the incident described by the petitioner in his November 24, 2008 affidavit, in which the petitioner describes his wife hitting him with a pair of scissors. As discussed above, Ms. [REDACTED] states that the petitioner was never psychologically or physically threatened with death or serious injury and therefore he did not feel intense fear, helplessness, or horror from any of the events. Moreover, although [REDACTED] indicates that she referred the petitioner to the Institute for Psychoanalytic Training and Research for ongoing psychotherapy treatment and medication consultation, the record contains no evidence of any such follow-up treatment or prescribed medication.

While we do not question the expertise of [REDACTED], her testimony fails to establish that the behavior of the petitioner's wife constituted extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). [REDACTED] states that the petitioner felt controlled by C-L-, but she does not provide substantive, probative information indicating that C-L-'s behavior included actual threats, controlling

actions or other abusive behavior that was part of a cycle of psychological or sexual violence. Moreover, [REDACTED] discusses actions of the petitioner's wife that the petitioner himself does not mention in any of his own testimony, which creates inconsistencies that detract from the probative value of [REDACTED]'s testimony.

In this case, we do not find the petitioner's evidence to be credible or sufficient to meet the petitioner's burden of proof. As discussed above, the evidence of record contains numerous unexplained inconsistencies and discrepancies regarding the petitioner's claims of battery and extreme cruelty. The petitioner's photographs of the scars on his hand and arm do not demonstrate that the injury was in any way connected with abuse from C-L-. The relevant evidence also does not support his claim that C-L- hit him with scissors. As described, the actions by the petitioner's wife also do not constitute extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The relevant evidence fails to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that his wife's non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner.

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

The petitioner has not demonstrated that he resided with his wife, married her in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.