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



**U.S. Citizenship
and Immigration
Services**

B9



FILE: [REDACTED]
EAC 07 124 50269

Office: VERMONT SERVICE CENTER

Date: **AUG 06 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. 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 and consideration.

The petitioner seeks immigrant classification 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 an alien battered or subjected to extreme cruelty by a United States citizen.

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).

On June 16, 2008, the director denied the petition, determining that the petitioner had not established: that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse; that he is a person of good moral character; or that he had entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and the petitioner's third personal statement. Upon review we concur with the director's determination that the petitioner has not established: that he was subjected to battery or extreme cruelty perpetrated by his spouse; that he is a person of good moral character; or that he entered into his marriage in good faith. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii) which was in effect when the petition was filed.

Section 204(a)(1)(J) of the Act 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 explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

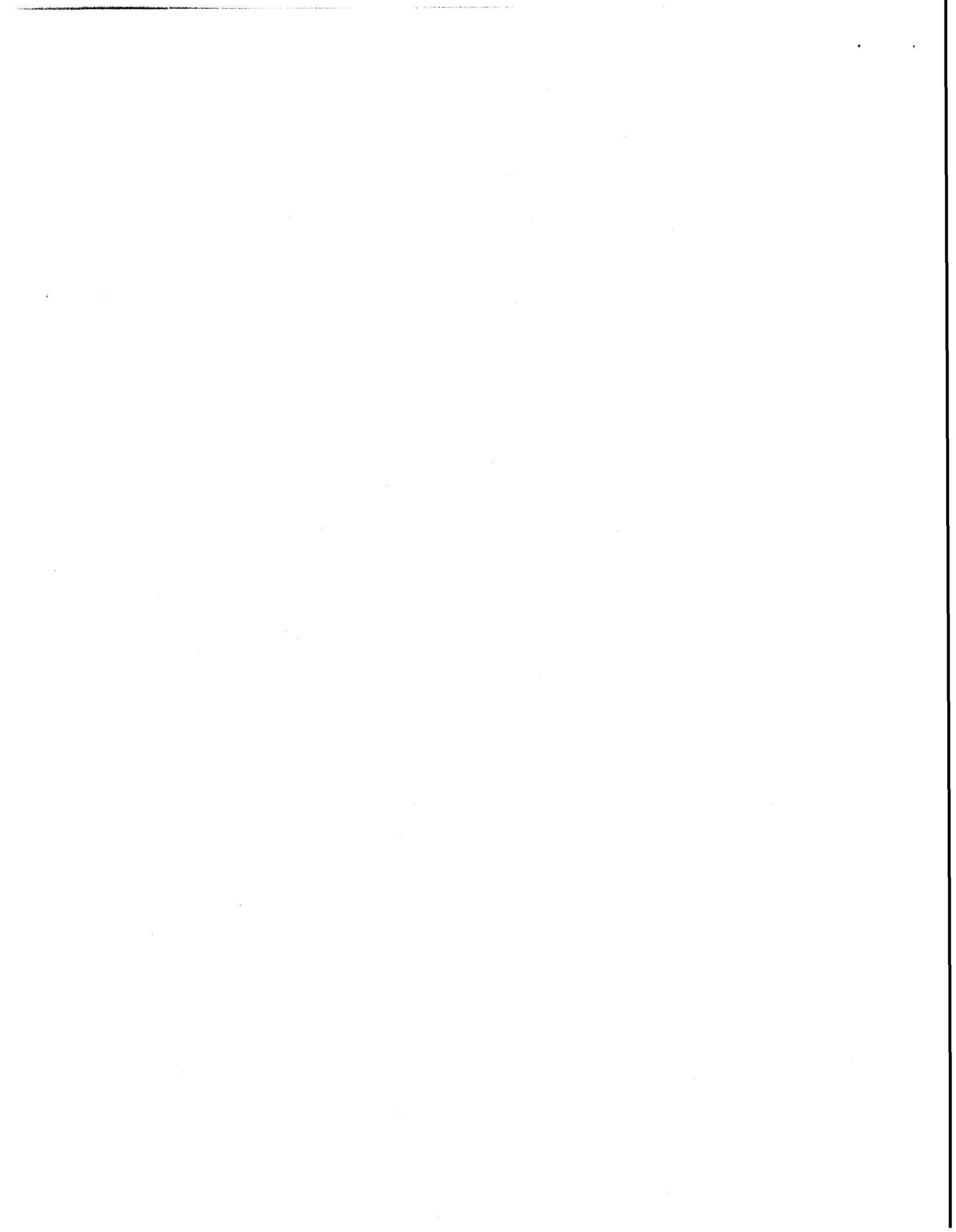
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(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely 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 explained 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.

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

* * *

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



residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of India. It is unclear when the petitioner initially entered the United States or in what status. On May 14, 1997 he married M-C-¹, the claimed abusive United States citizen spouse. On March 29, 2007, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

Abuse

In support of the petition, the petitioner submitted his March 15, 2007 personal statement. The petitioner indicated that in October 2007 things started getting tense between he and M-C- and suddenly he was not allowed to have his friends over or call him on the phone. The petitioner declared that M-C- would cry, use obscene and obnoxious language and would react aggressively if he attempted to talk to her about it. The petitioner noted that M-C- stole money from his pocket, abused and insulted him in front of friends and neighbors, started physically hitting and kicking him in front of her friends, and started trashing his personal mail and would not give him his phone messages. The petitioner declared that on one occasion when he refused to get her a beer she hit him with a baseball bat. The petitioner indicated that although he was severely hurt, he did not call the police. He does not indicate that he received medical assistance only that he slept in his car that night. The petitioner indicated he did not know what to do so he moved out and later when he learned that she had moved out of the residence, he moved back.

The petitioner also provided the November 17, 2006 affidavit of [REDACTED] who declared: that one night he heard arguing and when he asked the petitioner about the screaming, the petitioner told him his wife was upset because he did not have money for her drinking and gambling; that the petitioner had shown him scratches that he got from china that M-C- had thrown at him; and that M-C- had specifically threatened the petitioner that if he told anyone about their problems she would have him arrested and deported.

The record also included a November 15, 2006 affidavit signed by [REDACTED] who declared: that a while into the petitioner's marriage she noticed that the petitioner seemed disturbed and when asked he told her that his wife was very obnoxious toward him, that she demanded money for gambling and drinking, and at times she threw things at him.

The record also included a psychological evaluation prepared by [REDACTED] Ph.D., dated February 20, 2007, the same date [REDACTED] interviewed the petitioner. [REDACTED] reports that the

¹ Name withheld to protect the individual's identity.



petitioner told him: that soon after the couple married, M-C- called the petitioner derogatory names, that she kicked him, spat at him, pulled his hair, grabbed him, slapped him, pushed him and threw empty plates and empty glasses at him which shattered. [REDACTED] further noted that the petitioner indicated that M-C- requested that she perform oral sex on him, that he anally penetrate her, and that they have sex during her menstrual period. [REDACTED] further reported that the petitioner indicated that M-C- would try to grab money from his wallet and would consume a great deal of beer and frequently smelled of marijuana. [REDACTED] also noted that M-C- disappeared about three months after the marriage but would call the petitioner and demand money and threaten to have him deported. [REDACTED] diagnosed the petitioner with Adjustment Disorder with Mixed Anxiety and Depressed Mood during the period of time he was married to M-C- and that the emotional damage inflicted on him during his marriage has had a long-lasting impact on his self esteem as a man.

In response to the director's request for further evidence (RFE) on this issue, the petitioner provided a second personal statement dated March 3, 2008. The petitioner added that M-C- had physically assaulted him on several occasions. The petitioner noted that his friend, [REDACTED] witnessed his wife trying to push him out of the home. The petitioner indicated that he never called the police because M-C- always threatened him with "back firing" stories.

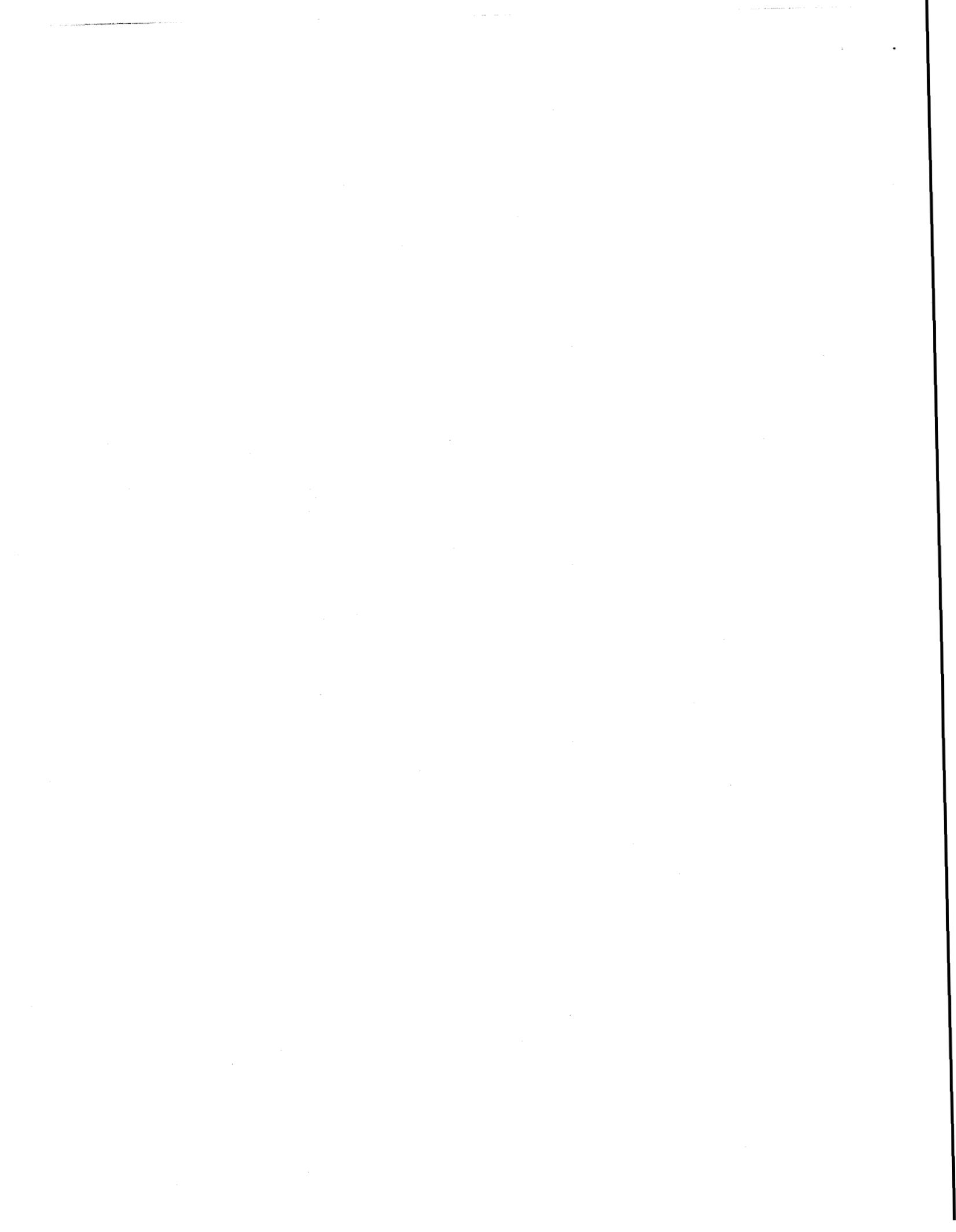
The petitioner also provided a March 3, 2008 affidavit of [REDACTED] who declared that he had visited the couple frequently because he lived close by and that on one occasion M-C- was very rude and rough to him and used very bad language. [REDACTED] indicated that he stopped by on one occasion hoping to find the petitioner alone but that M-C- was there with friends and started yelling and abusing the petitioner and even pushed him and threw a plate at him which cut the petitioner's hand.

The petitioner further provided a March 3, 2008 affidavit signed by [REDACTED] who declared: that one time when he phoned the petitioner he heard M-C- in the background cursing at the petitioner; that when he tried to call again, M-C- told him he should not call again; and that when he tried to visit the petitioner, M-C- told him that the petitioner was not at home and he should not try to visit again.

The record also included a follow-up affidavit signed by [REDACTED] who declared that he had interviewed the petitioner again on February 29, 2008 and had written his report on March 1, 2008. [REDACTED] indicated that the petitioner continued to be depressed even more so than the year before. [REDACTED] opined that the depressive impact of the abuse on the petitioner is permanent.

On appeal, counsel for the petitioner submitted yet a third personal statement signed by the petitioner. In the August 3, 2008 statement, the petitioner reiterated that his wife had physically assaulted him on several occasions and that he was afraid to call the police because M-C- always threatened him with "back firing" stories.

Upon review of the petitioner's statements, the AAO does not find sufficient evidence to establish that the petitioner has been subjected to battery or extreme cruelty by his United States citizen spouse. The



petitioner provided general testimony regarding the alleged battery with a baseball bat and failed to provide detailed information regarding specific instances of abuse that occurred during the several months he and his wife allegedly resided together prior to her disappearance. In addition to the generality of most of the information in the record, the petitioner has also submitted inconsistent information. For example, the petitioner reported to ██████ that his wife requested sexual acts that he found distasteful and kicked him, spat at him, pulled his hair, grabbed him, slapped him, pushed him; however, the petitioner does not mention anything of this nature in his personal statements. Moreover, the petitioner fails to relate incidents of claimed abuse as noted by other affiants. It is the generality of the petitioner's statements, the lack of consistency with other information in the record, and the failure to recite specific incidents of abuse in detail that fail to establish that the petitioner was subjected to battery or extreme cruelty. Similarly, the affidavits submitted on the petitioner's behalf do not provide the necessary information to allow an informed decision regarding the credibility of the statements. The affiants do not provide probative testimony regarding the circumstances of any specific incident that could be considered battery or extreme cruelty as set out in the statute and regulation. The AAO again notes that the petitioner in this matter fails to initially describe incidents later described by the affiants who provided statements on his behalf. It appears that the petitioner in this matter escalated the severity and type of abuse over the course of the petition, such that the testimony, general as it is, must be found inconsistent.

Upon review of the evaluations prepared by ██████, the AAO notes that ██████ interviewed the petitioner twice, the first time almost ten years after the petitioner's separation from his spouse. In addition, ██████ reported incidents of alleged abuse that the petitioner did not report in his own personal statements. The AAO finds the petitioner's statements to ██████ regarding M-C-'s conduct during the marriage to be statements that amount to inconsistent testimony on the part of the petitioner. The AAO finds that ██████ evaluations fail to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering his findings speculative and diminishing the value of his evaluations. The AAO further observes that ██████ does not offer examples and analysis of the causal relationship of specific abuse that is consistently detailed to his diagnosis of the petitioner's adjustment disorder with mixed anxiety and depressed mood, a condition that existed in the opinion of ██████ almost ten years subsequent to the disintegration of the marriage. The AAO finds that ██████ evaluation is not probative and does not establish that the petitioner was subjected to battery or extreme cruelty.

Upon review, the petitioner has not provided any probative credible testimony regarding his spouse's behavior which rises 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 record does not include probative testimony that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that M-C-'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. When evaluating the record as a whole, the AAO finds the record lacks information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO does not accept generic information with little chronological timeline to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining



information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter, he has failed to do so.

Good Faith

Regarding the issue of the petitioner's good faith in entering into the marriage, the AAO observes that the key factor in this determination is whether the petitioner intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter, the petitioner in his personal statement provided a general overview of meeting M-C- in January 1997, dating, and proposing on May 1, 1997 and marrying on May 14, 1997. Similarly, the affiants who submitted statements on the petitioner's behalf note generally that the couple met, married, and initially seemed happy. The affiants provide no probative details regarding their observations of the petitioner's allegedly good faith entry into marriage. It is the generality and bareness of detail included in the affidavits that fail to establish the affiants' actual knowledge of the petitioner's intent in entering into his marriage.

The AAO finds that while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on his behalf fail to support a finding that he entered into his marriage in good faith. The AAO finds the information in the record insufficient to demonstrate that the couple commingled assets and otherwise intended to establish a life together. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that he entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Although the director requested and the petitioner indicated that he would submit a local clearance police report from the New York Police Department verifying that he does not have a criminal record, the petitioner failed to provide this information. The AAO also observes that the petitioner in his March 3, 2008 affidavit acknowledged that he had been arrested in 1996 on a drunk driving charge in Wisconsin while visiting friends. The petitioner has not provided the disposition of that matter for the record. Although the AAO acknowledges that the petitioner has submitted affidavits from friends and a Sikh temple attesting to his character, this information is insufficient without local police clearances or adequate explanations why such police clearances are unavailable. Accordingly, the AAO concurs with the finding of the director that 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.

Beyond the decision of the director, the AAO also finds that the petitioner has not submitted probative evidence that he and M-C- resided together. The AAO notes that on the Form I-360, the petitioner indicated that he lived with M-C- from May 1997 to October 2001. However, the petitioner indicated in his March 15, 2007 personal statement that the couple had been living separately since late 1997. In the petitioner's statements to [REDACTED] he indicated that he and M-C- separated after approximately three months of marriage, or August 1997. As the record does not include any documentary evidence



that the couple resided together and contains inconsistent testimony regarding the petitioner's alleged residence with M-C-, the record is insufficient to establish that the couple resided together.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) in effect when the petition was filed. On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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. The petitioner has not sustained that burden.

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

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