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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] Office: VERMONT SERVICE CENTER Date: AUG 13 2010
EAC 08 036 50437

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

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

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.

On May 26, 2009, 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.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief and documents in support of the appeal.

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 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:

> (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.
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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.
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> * * *
>
> (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.
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> * * *
>
> (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 Israel. He entered the United States on August 28, 2004 as a nonimmigrant visitor. On July 17, 2006, the petitioner married A-H-[1], the claimed abusive United States citizen spouse. On August 15, 2006, A-H- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Resident or Adjust Status. On December 30, 2009, the Form I-130 and I-485 were denied. On November 13, 2007, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that he resided with A-H- from May 2006 to January 2007. On July 10, 2008, the marriage was dissolved.

Abuse

In support of the petition, the petitioner submitted an undated personal statement. The petitioner stated that at the beginning of the marriage, everything was perfect. He added that after some time cultural and religious differences started to influence the relationship. The petitioner indicated: that A-H- resisted to his celebrating Jewish holidays and that she and her family did not include him in Christian holidays; that he felt useless because he could not work as he lacked a work permit and during those times he and A-H- would fight a lot; and that "[s]he even threatened to kick [him] out of the country for no reason at all whenever [he] crossed her or didn't do exactly what she wanted [him] to do." The petitioner stated further: that whenever he tried to express himself to her regarding her treatment of him, she would tell him to shut up or threaten him more; that she mentally abused him constantly; and that after a long period of time he realized that she was secretly dating someone else and that was too much for him and it was over between them. The petitioner noted that he was constantly scared that A-H- was going to call the police or immigration on him and have him removed from the United States for no reason.

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

The initial record also included an October 10, 2007 statement signed by who declared: that six or seven months after meeting, the petitioner and A-H- decided to get married; that after a short period realized the petitioner was worried; and that the petitioner told him that A-H- was threatening to kick him out of the country and he was stressed but just kept his mouth shut in order for things not to get worse.

The initial record further included a psychological report prepared by Ph.D. based on a clinical interview and test of undetermined length on October 22, 2007. provided a thorough history and evaluation of the petitioner's personality and mental state and found that the petitioner suffered from Adjustment Disorder with Anxiety. indicated in brief: that the petitioner was separated from his wife since January of 2007; that the petitioner reported that after his marriage, his wife was not the same person he met; that they fought a lot; and that he obtained a lawyer because she was blackmailing him. noted that the petitioner evidenced significant psychological disturbance due to his distress over the failure of his marriage, the abusive behaviors of his estranged wife, and his feelings of isolation. She further noted that he appeared fearful that he would be made to leave the United States and was apprehensive about that possibility. indicated that the petitioner would benefit from individual psychotherapy/counseling for his anxiety and grief/loss issues. Although referenced "abusive behaviors of [the petitioner's] estranged wife" she failed to provide any specific, detailed examples of said "abusive behavior."

In response to the director's request for further evidence (RFE) on this issue, the petitioner supplied a second personal statement dated February 26, 2009. The petitioner declared: that after he was married, (July 17, 2006) things were only good for a couple of weeks and that A-H- lost all her warmth and became cold and distant; that she ignored him; that she did not want him to go out with her friends; that she kept secrets from him and told him she did not want to share her life with him; and that if he asked her why she was mad she would be overly dramatic and threaten to divorce him if he did something she did not like. The petitioner noted that A-H- indicated she would use the immigration service to kick him out of the country. The petitioner further declared: that during the time they were married, A-H- never paid for anything; that she was sarcastic about his inability to work; that she would laugh at what he cooked and would refuse to eat it; that she would scream at him for no reason and other times would ignore him for weeks at a time; that she only talked to him when she needed money; and that A-H- knew she had complete control of the relationship and his ability to stay in the United States. The petitioner stated: that A-H- would not discuss what she had filed with immigration; that she made fun of him as he could not read English; and that she mocked him for being a foreigner. The petitioner further indicated: that A-H- hated that she did not have complete control over him; that she would get angry when he developed new friends; that she was not interested in being intimate with him; that her constant abusive behavior began to hurt his self-esteem; and that when his family came to visit in February 2007, she was cold toward his family members, and although she would talk nicely to them, her behavior was generally cold. The petitioner also noted: that he believed that A-H- had married him because his family had money; that she humiliated him so much that he moved back in with this old roommate, Shay; but that he could not live without her and begged to be with her again, then the whole routine of abuse would start

again. The petitioner declared: that A-H- did not like him to speak Hebrew in front of her and would become upset when he did; that she constantly held the fact that his ability to stay in the United States depended on her; that she would only be nice to him when she wanted something; and that about three weeks after they broke up she went to her new boyfriend whom she was secretly dating while married to him. The petitioner described his two years with A-H- as the worst two years of his life and noted that he had been having panic attacks because of what she put him through.

The record also included a second psychological report prepared by Ph.D. based on an interview of unspecified length on February 19, 2009. noted that when she first interviewed the petitioner he had poor English language skills but that since that time his English had improved and she was able to attain a more complete understanding of the depths of the petitioner's despair and psychological disturbance. noted that the petitioner reported: his ex-wife took advantage of his inability to speak English; that she was controlling; that she treated him like an animal; that she yelled at him; and that she was totally different from the person he had met. noted further that the petitioner reported the types of things that A-H- did that upset him included, among other things: that she was verbally abusive; that she called him an "alien"; that she was not respectful; that she would not let him have friends; that she ordered him around; that she made him pay for everything; that she would not have sex with him unless she wanted it; that she controlled everything that he did or did not do; and that she would not talk to him for days at a time. indicated that the petitioner reported that he separated from A-H- in February 2008 and also reported that he separated in February 2007 and that the petitioner thought the couple divorced in October 2008.[2] diagnosed the petitioner with post traumatic stress disorder (PTSD), chronic with severe depression and anxiety, as well as panic disorder with agoraphobia. opined: "that the emotional abuse that [the petitioner] suffered at the hands of his ex-wife [A-H-], is the cause of his emotional and psychological disturbance." further stated: that as the petitioner "did not have any of these symptoms prior to the collapse of his marriage, his separation from his wife, and their subsequent divorce, it is suspected that the distress over the failure of his marriage, the abusive behaviors of his ex-wife, his feelings of isolation, his sense of disgracing his family, and his fear that he will be made to leave the United States, were and still are traumatic to him and caused the onset of PTSD."

The record in response to the director's RFE also included a February 25, 2009 affidavit submitted by the petitioner's father who declared that when he visited the petitioner in February 2007, A-H- was unpleasant and seemed annoyed that he and his wife were there. The petitioner's father did not indicate that he observed any abusive behavior perpetrated by A-H- against his son. The petitioner's sister also submitted an affidavit dated February 19, 2009. The petitioner's sister declared that when she visited the petitioner in October 2006, A-H- seemed distant and cold towards her brother and did not speak to him. The petitioner's sister did not indicate that she witnessed any abusive behavior perpetrated by A-H- against her brother. The petitioner's mother also prepared a February 25, 2009 affidavit, in which she declared that when she visited in February 2007, A-H- seemed mad that she and her husband were there and that it was uncomfortable to be in the apartment. The petitioner's

[2] The record shows that the divorce was granted in July 2008.

mother did not detail any alleged abuse perpetrated by A-H- against the petitioner. The record also included an affidavit dated February 25, 2009 signed by , who declared: that A-H- did not like it when he and the petitioner would speak Hebrew; that when he visited the petitioner, A-H- ignored the petitioner; that he was afraid of A-H- because she always asked about his immigration status; and that after the petitioner moved in with A-H- he saw less and less of the petitioner. The record further included a statement signed by who indicated that A-H- did not like it when he spoke Hebrew with the petitioner.

The affiants all indicated that they noticed a change in the petitioner's behavior after his marriage, indicating that he appeared more introverted and depressed about his marriage and the way A-H- treated him. The affiants also comment that the petitioner is Jewish and that his ex-wife is not.

The record in response to the director's RFE further included the petitioner's medical records relating to an emergency room visit on August 17, 2008 for chest pains and the resulting diagnosis of stress and the administration of the drug, buspirone. The medical reports do not attribute the petitioner's stress to any particular cause. Counsel for the petitioner also submitted computer printouts from the Mayo clinic on depression, generalized anxiety disorder, agoraphobia, post traumatic stress disorder, and buspirone, a drug used to treat anxiety disorders or to relieve symptoms of anxiety.

Upon review, the director denied the petition on May 26, 2009. The director pointed out inconsistent information in the record. For example, the petitioner made inconsistent statements regarding his use of alcohol in his February 26, 2009 affidavit and his statements made to The petitioner provided chronological captions on photographs and the dates certain events occurred such as his parents' visit which is shown as in August 2006 and in November 2006 on the photographs, although the petitioner's parents indicate they visited the petitioner and met A-H- in February 2006 and visited the couple again in February 2007. The director also noted that the petitioner's statement that he was isolated from friends and family two weeks after the marriage which occurred in July 2006 is at odds with the captions of the events depicted in the photographs and the alleged dates of the events. The director found the petitioner's testimony unreliable and noted that evaluation was based on the petitioner's testimony. The director further determined that the petitioner had not sufficiently demonstrated that the petitioner's spouse had used his immigration status to control or coerce the petitioner.

On appeal, counsel for the petitioner asserts that the director did not properly consider the petitioner's testimony, evaluation, or evidence of the petitioner's need for continuing medical care. Counsel contends that the petitioner's limited English skills and the need to file the VAWA petition quickly contributed to the generality of the petitioner's initial affidavit and notes that the petitioner's second affidavit expounded upon but did not contradict his initial statement. Counsel avers that the petitioner's spouse's threat on one occasion to have the immigration service kick him out of the country, her failure to hire an attorney to assist in filing the Form I-130 petition, and her mocking the petitioner as a foreigner or "alien" are incidents of control and coercion and not merely marital discord.

The AAO observes that counsel for the petitioner submits additional documentation received by the AAO on July 29, 2010, more than one year after the brief and supplemental evidence was due in the AAO officeThe documentation submitted includes a letter from the petitioner's friend who discusses the deterioration of the petitioner's health since his divorce. Also included is a March 1, 2010 letter from M.D., J.D. who opines that the petitioner's "anxiety and depression are *due in part* to psychological trauma associated with his domestic situation." [Emphasis added.] The AAO observes that the petitioner's "domestic situation" is not specified and, as will be discussed in more detail below, the petitioner's illness has not been causally connected to any claimed abuse by the petitioner's former spouse. Contrary to counsel's characterization of the remaining late submitted documentation, the medical records and letter from , D.O., F.A.C.O.I. do not state that the petitioner's gastro-intestinal condition are related to stress and anxiety over his former spouse's treatment. The late submitted documentation does not assist in establishing that the petitioner was subjected to battery or extreme cruelty during his marriage to his former spouse.

Upon review of the remainder of the record on appeal, the AAO concurs with the director's determination on this issue. Neither the petitioner's initial statement nor the statement submitted in response to the director's RFE provides the detailed, consistent, and probative evidence that establishes eligibility for this benefit. The petitioner has provided general testimony that in and of itself is insufficient to establish credibility and is sufficiently vague as to not lend itself to an evaluation regarding credibility. In addition to the inconsistencies noted by the director in his determination, the AAO also finds that the petitioner has not provided consistent testimony regarding his alleged residence with A-H-, the date of his separation, or the date of his divorce. The petitioner's inconsistent recall of such significant events and their claimed affect upon the petitioner also undermine the credibility of his testimony.

The AAO observes that the petitioner does not claim that he was subjected to battery but rather bases his claim on allegations that he was subjected to extreme cruelty. The petitioner claimed generally that his former spouse became cold and distant, that she did not like him to go out with friends or speak Hebrew with them, that she did not pay for anything and was sarcastic about his inability to work, that she screamed at him for no reason, that she made fun of him, that she secretly dated another man, and that she married him because his family had money. These allegations are not detailed and do not relate specific incidents of abuse. In contrast, the photographs provided and the captions reflect that the couple went out together with friends after their marriage. In addition, the petitioner acknowledged that his former spouse would be "overly dramatic" and threaten divorce, but then indicates his belief that his former spouse would use his immigration status to kick him out of the country. Further, the petitioner noted that his former spouse hated that she did not have complete control over him but then alleged that she knew she had complete control of the relationship and his ability to stay in the United States.

While we also acknowledge the petitioner's claim that his former spouse would not discuss what she filed with immigration and held the fact that his ability to stay in the United States depended on her, he does not describe specific instances of her threats to report him to immigration and his statements

do not describe a consistent overview of the marital relationship. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindess," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." In this matter, the petitioner has failed to establish that A-H-'s actions 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 AAO does not find that the petitioner's statements or the statements of others submitted on his behalf demonstrate that he was the victim of any act or threatened act of physical violence or extreme cruelty or that A-H-'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. The record is simply insufficient in this regard.

The AAO has reviewed the two reports prepared by . As noted above, in her first report does not describe any specific abusive behaviors of the petitioner's former spouse and finds that the petitioner evidenced significant psychological disturbance due to his distress over the failure of his marriage, the abusive behaviors of his estranged wife, his feelings of isolation as well as appearing fearful that he would be made to leave the United States. does not discuss a specific causal connection between the petitioner's adjustment disorder with anxiety and extreme cruelty as defined in the regulation. Rather, appears to acknowledge that the petitioner's apprehension in regards to being made to leave the United States, his distress at the failure of his marriage, the unidentified actions of claimed "abusive behavior" as well as the petitioner's feelings of isolation all contributed to the petitioner's adjustment disorder with anxiety.

Similarly, in her second psychological report reasoned that as the petitioner "did not have any of these symptoms prior to the collapse of his marriage, his separation from his wife, and their subsequent divorce, it is suspected that the distress over the failure of his marriage, the abusive behaviors of his ex-wife, his feelings of isolation, his sense of disgracing his family, and his fear that he will be made to leave the United States, were and still are traumatic to him and caused the onset of PTSD." Again, noted a number of suspected causative factors resulting in the petitioner's mental and physical condition. While we acknowledge that also opined at one point in her evaluation: "that the emotional abuse that [the petitioner] suffered at the hands of his ex-wife [A-H-], is the cause of his emotional and psychological disturbance," the "emotional abuse" described is not extreme cruelty as set out in the regulation. related the general statements the petitioner made regarding his former spouse's change in behavior after the marriage, the generally described verbal abuse and her lack of respect, as well as his claim that she would not let him have friends, ordered him around, withheld sex, ignored him, and controlled everything he did or did not do. We do not question professional training and experience; however, her reports do not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's depression/post traumatic stress disorder. The AAO notes as well that, although initially recommended that the petitioner seek therapy, there is no evidence that the petitioner sought subsequent treatment.

The AAO also reviewed the statements of the petitioner's friends and family. As those statements relate to the claimed extreme cruelty, the AAO observes that the affiants do not detail specific incidents of abuse, but rather comment on the couple's cultural and religious differences and that A-H-'s behavior was cold and unpleasant and that A-H- did not like the petitioner to speak Hebrew. The affidavits submitted on behalf of the petitioner do not include probative testimony of specific incidents of abuse that could be considered extreme cruelty under the statute and regulation.

The AAO has also considered the petitioner's medical records and does not find that the petitioner's continuing problems with anxiety and stress have been causally connected to specific abuse by the petitioner's former spouse. The medical records do not provide the necessary detail of underlying traumas or causative factors that support a conclusion that his medical condition is due to the claimed abuse experienced at the hands of his United States citizen spouse.

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 record includes generic information with inconsistent chronological timelines, inconsistent and general statements, and lack of detailed instances of the claimed abuse. The AAO is aware of the difficulties of obtaining information to corroborate eligibility for this benefit; however, the petitioner must provide 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. The petitioner in this matter has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by his former spouse.

Good Faith Entry into Marriage

Beyond the decision of the director, the petitioner has also failed to establish that he entered into the marriage in good faith. The AAO has reviewed the petitioner's statements and finds that the petitioner failed to provide probative testimony regarding his intent when entering into marriage with A-H-. The petitioner stated generally that the couple were introduced, met a few times, then decided they were interested in pursuing a relationship, and after six months were married on July 17, 2006. As referenced above, the photographs submitted and the captions accompanying the photographs are inconsistent with the petitioner's account of events occurring prior to and during the marriage. The petitioner has provided an inconsistent account of when the couple resided together and when they divorced. The petitioner has provided a certificate of group health plan coverage, dated August 1, 2007 showing that he was added to A-H-'s health insurance on March 18, 2007, after the petitioner indicated he had separated from A-H- in January or February 2007. The record also includes a utility bill issued to A-H- in June 2007 which does not list the petitioner.

The petitioner does not describe the couple's introduction in detail, does not describe their interactions prior to the marriage or after the marriage, other than as it related to the claimed abuse, and does not provide any probative information that would assist in establishing that he entered into the marriage in good faith.

The AAO has reviewed the statements submitted on the petitioner's behalf and does not find any probative details regarding the affiants' observations of the petitioner's allegedly good faith entry into the marriage. The affiants do not describe any particular incidents wherein they witnessed the alleged bona fides of the couple's marital relationship. The general statements submitted do not substantiate that the petitioner's intent upon marrying A-H- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the intent of the petitioner upon entering into the marriage.

The photographs submitted show that the petitioner and A-H- were together on several occasions, but this evidence alone fails to establish the requisite good faith marriage. The documents submitted as referenced above, are insufficient to establish that the petitioner intended to establish a life with A-H-. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on his behalf also fail to support a finding that he entered into this marriage in good faith. Accordingly, the AAO finds that the petitioner has failed to establish that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Also beyond the decision of the director, the petitioner failed to establish that he resided with A-H-. The record does not include consistent and probative evidence detailing the couple's residence or residences, the actual time period the couple resided together, if any, and detailed and consistent testimonial evidence from the petitioner describing the couple's residence(s). The record is incomplete in this regard. Thus, the petitioner has also failed to establish that he resided with A-H-.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons. 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. Here that burden has not been met.

ORDER: The appeal is dismissed.