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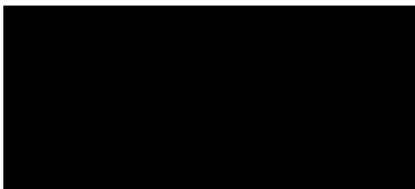
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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

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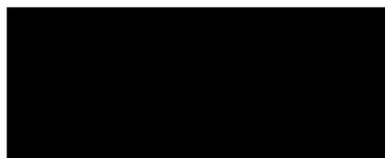
Office: VERMONT SERVICE CENTER

Date: **AUG 16 2010**

IN RE: [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:

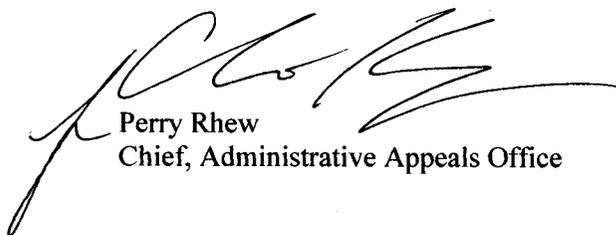


INSTRUCTIONS:

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 service center director 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 Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that his wife subjected him to battery or extreme cruelty; and (2) that he married his wife in good faith. On appeal, counsel submits a memorandum of law and additional evidence.

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

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

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

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

- (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

\* \* \*

- (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 explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*Evidence for a spousal self-petition –*

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

\* \* \*

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

\* \* \*

- (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 petitioner is a citizen of Saint Lucia. He married J-H-<sup>1</sup> a citizen of the United States, on June 2, 2008, and submitted the instant Form I-360 on February 3, 2009. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including counsel's responses to the director's requests for additional evidence, the director denied the petition on March 18, 2010. The petitioner filed a timely appeal on April 20, 2010, and submits additional testimonial evidence on appeal.

The two issues before the AAO on appeal are whether the petitioner has established that he was subjected to battery and/or extreme cruelty by J-H- during their marriage, and whether he married her in good faith. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition.

### **Battery and/or Extreme Cruelty**

The AAO will first consider the issue of whether the evidence of record supports a finding that the petitioner was subjected to battery or extreme cruelty by J-H- during their marriage. As evidence that he was abused, the petitioner submits several statements; letters from his mother, his sister, and a friend; and a psychological evaluation.

In his January 30, 2009 letter submitted in response to the director's first RFE, the petitioner stated that he learned J-H- was a drug addict after they were married. According to the petitioner, as he came home from work one day J-H- was acting strange and restless, and told him she needed money. When he questioned her, J-H- became angry and cursed at him, so he gave her the money she had requested. J-H- left the apartment, and later returned in a great mood. According to the petitioner, this became a recurring pattern. The petitioner stated that when he did not want to give J-H- money to support her addiction, she threw things at him, and the situation eventually became so stressful that he was afraid to come home. One afternoon, he told J-H- that he wanted to get help for her, and she left him.

In his January 31, 2010 letter submitted in response to the director's second RFE, the petitioner explained that J-H-'s demeanor changed slowly. First, he began noticing that the food she prepared for him was declining in quality. J-H- also quit greeting him when he arrived home from work as she had done previously, and began refusing his sexual advances. The petitioner stated that eventually, J-H- began hitting him; mentally abusing him; insulting him in front of his friends; and once threw a remote control at him. J-H- had been in charge of paying the bills, and began paying them late. Things disappeared from the house without explanation and, when he questioned J-H- as to where they had

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

gone, she threatened to return to her hometown. Eventually, she confessed that she was abusing drugs. The petitioner stated that he began seeing a doctor constantly but, when he requested that the two see a therapist together, J-H- refused. He tried "reviving things by buying us some life insurance together," but it did not work. When he asked her to talk to his mother, she slapped him. Eventually, J-H- returned to her hometown.

In his April 2, 2010 letter submitted on appeal, the petitioner stated that as their marriage deteriorated, he and J-H- engaged in sexual relations less frequently, and that she sometimes ridiculed him after sexual relations.

The petitioner also submitted two letters from his mother. In her first letter, his mother stated that the petitioner came to her apartment frequently to avoid his stressful situation. She stated that the petitioner told her that J-H- used money intended for rent and utilities on drugs, and also recounted a December 2008 incident during which she and her daughter visited the couple's apartment while the petitioner was working. The petitioner's mother stated that J-H- told her that although the petitioner was a kind and loving husband, she would leave him if he persisted in insisting she obtain treatment for her addiction. The petitioner's mother also stated that J-H- shoved her against a wall and grabbed the telephone away from her when she tried to call for help. In her second letter, the petitioner's mother repeated her earlier assertions and added that J-H-'s speech was slurred at a Thanksgiving Day celebration and that she could barely walk. She left after receiving a phone call; the family learned later that the call had been from her drug dealer.

The petitioner also submitted two letters from his sister. In her first letter, she stated that J-H- was addicted to drugs, and that she verbally and emotionally abused the petitioner. She also stated that that the petitioner visited her when feeling stressed by J-H-'s behavior. In her second letter, the petitioner's sister repeated her earlier assertions and stated that J-H- cursed at the petitioner; called him names; and embarrassed him in front of friends. She also recounted how J-H-'s speech was slurred at a Thanksgiving Day celebration and that she could barely walk. She also stated that when she and the petitioner went to confront her over her behavior, J-H- threw a bowl at the petitioner and tried to hit him. Finally, she described an incident during which she and her mother went to confront J-H-, without the petitioner. According to the petitioner's sister, J-H- pushed her mother against a wall and grabbed the phone from her when she tried to call for help.

In his January 30, 2010 letter, ██████████ stated that the petitioner told him that he had learned from a neighbor that many people were coming and going from the couple's apartment while he was away at work. ██████████ also stated that the petitioner told him that J-H- used money intended for rent and utilities for drugs; that she pushed the petitioner; and that the petitioner was an emotional wreck. In his second letter ██████████ repeated his earlier assertions and added that J-H- cursed at the petitioner and demanded money from him.

Finally, the AAO turns to the February 2, 2010 letter from [REDACTED], a licensed psychotherapist, who stated that he began seeing the petitioner approximately two times per month in June 2009.<sup>2</sup> [REDACTED] stated that the petitioner told him that J-H- insulted and humiliated him in front of his friends and family; called him names; cursed at him; threw things at him; and hit his chest. [REDACTED] stated that the petitioner told him that he felt alone; had panic attacks; developed high blood pressure; and feared losing control over his life. According to [REDACTED], the petitioner's symptoms match those for major depressive disorder and panic disorder.

The AAO has reviewed the entire record and finds that, in sum, the relevant evidence fails to establish that J-H- subjected the petitioner to battery or extreme cruelty during their marriage. Although the record contains testimonial evidence that J-H- threw a remote control and other objects at the petitioner, the petitioner's testimony regarding such incidents is vague, generalized, and lacking in probative details regarding specific incidents of such alleged physical abuse.

Nor does the evidence of record indicate that the actions of J-H- constituted extreme cruelty. First, the AAO notes again that the testimonial evidence of record remains generalized in nature and lacks detailed, probative information regarding specific incidents of alleged abuse. Nor does [REDACTED] letter establish the petitioner's claim. Although the AAO does not question [REDACTED] professional qualifications, his letter submitted in this case largely repeats information conveyed to him by the petitioner regarding J-H-'s behavior during their marriage and [REDACTED] statements alone fail to establish that such behavior constituted extreme cruelty. Although J-H-'s non-physical behavior as described by the petitioner was unkind, the petitioner has failed to establish that her actions are comparable to the types of acts described in the regulation's definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that J-H-'s non-physical behavior was accompanied by any coercive actions or threats of significant harm, or that her actions were aimed at insuring dominance or control over the petitioner. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner has failed to establish that J-H- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### **Good Faith Entry into Marriage**

The second issue before the AAO is whether the petitioner has established that he married J-H- in good faith. As evidence of his good faith entry into the marriage, the petitioner submits testimonial evidence as well as a life insurance policy, a residential lease, utility statements, evidence of a joint banking account, a receipt for the purchase of furniture, and photographs.

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<sup>2</sup> The testimonial evidence of record indicates that J-H- left the relationship in December 2008.

In his January 30, 2009 letter, the petitioner stated that he met J-H- at a restaurant at which they both frequented. The petitioner stated that he noticed J-H- was always looking in his direction. The petitioner stated that he and J-H- "hit it off immediately," eventually started dating, and that when he asked J-H- to marry him, she accepted his proposal and made him the happiest man on the planet.

In his January 31, 2010 letter, the petitioner stated that the restaurant at which he and J-H- met, and at which they both ate frequently, was located in J-H-'s hometown of South Bend, Indiana. He stated that they met in the summer of 2007, and had their first date in the winter of 2007. After a few dates, they met each other's families. The petitioner explained that although the wedding ceremony took place in Indiana, they decided to live in Brooklyn, New York.

In his April 2, 2010 letter, the petitioner stated that when he and J-H- met at the Ponderosa restaurant in Indiana, he knew she was the woman for him. The petitioner also described the couple's first sexual encounter and subsequent sexual interactions.

The petitioner's mother stated that the petitioner married J-H- in good faith in both of her letters, and his sister stated that he and J-H- were very much in love in her letters. In his letter submitted on appeal, ██████████ stated that J-H- and the petitioner were very happy together and that the petitioner was looking forward to their future.

The testimonial evidence of record fails to establish that the petitioner married J-H- in good faith. The petitioner's letters lack sufficient probative detail providing any insight into his intentions upon entering into the marriage. His letters provided no probative details about his initial relationship with J-H-, their subsequent interactions, their courtship, wedding ceremony, shared residence, and experiences beyond graphic details regarding their sexual encounters. Moreover, the petitioner does not explain why he "frequented" a Ponderosa restaurant in South Bend, Indiana in 2007 when he stated on a Form G-325A signed on January 22, 2009 that he had been living in Brooklyn since September 2004. The testimony of the petitioner's mother, his sister, and ██████████ is also of little probative value toward an evaluation of the petitioner's intentions upon entering the marriage, as they fail to describe in detail any occasions on which they observed the couple together, and offer no other detailed and probative information regarding the petitioner's feelings for J-H- prior to and during their marriage.

The documentary evidence of record also fails to demonstrate the petitioner's good faith entry into the marriage. Although the life insurance policy indicates that J-H- was the beneficiary of the policy as of January 2, 2009, it appears as though the couple had already separated by that point. The utility bills are not evidence of shared financial obligations, as they appear to have been issued after the couple ceased living together. Although the single statement from Washington Mutual Bank dated January 22, 2009 indicates that the petitioner and J-H- had a joint account, the account was opened on January 7, 2009, after the couple had ceased living together. Moreover, the account is in the petitioner's name "in trust for" J-H-, which indicates that J-H- could not access it. Nor is the lease evidence of a good faith marriage. Although both the petitioner and J-H- signed this document, the document is dated

March 10, 2008, but was not signed until October 2, 2008. Nor are the nine pictures of what appear to be the couple's wedding day evidence of the petitioner's good faith entry into the marriage, as they are undated and uncaptioned and demonstrate only that the petitioner and J-H- were together on one occasion. Although the record contains a copy of a receipt for the delivery of furniture, that receipt is, alone, insufficient evidence of shared financial obligations.

The AAO has reviewed the entire record and finds that, in sum, the relevant testimonial and documentary evidence fails to establish that the petitioner married J-H- in good faith. The petitioner's testimony lacks sufficient probative details about the petitioner's initial relationship with J-H- and his subsequent interactions with her to allow a conclusion that the petitioner entered into the marriage in good faith. The petitioner has not overcome this ground for the director's denial on appeal. The petitioner has failed to establish that he entered into marriage with J-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### **Conclusion**

On appeal, the petitioner has failed to overcome the director's grounds for denial and has not established that he was abused by J-H- during their marriage or that he married her in good faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and this petition must remain denied.

The burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.