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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **AUG 20 2010**

IN RE: Petitioner: [Redacted]

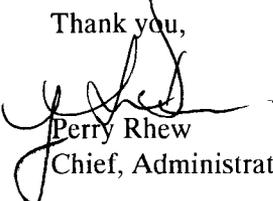
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[Redacted]

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 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 because the petitioner did not establish that he was subjected to battery or extreme cruelty by his wife during their marriage, and that he married her in good faith.

On appeal, counsel submits a brief.

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:

(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.

* * *

(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 Nepal who was admitted to the United States on an F-1 student visa on August 26, 2003. The petitioner married S-W¹, a U.S. citizen, on June 12, 2006, in Texas. On July 16, 2006,

¹ Name withheld to protect individual's identity.

S-W- 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 Residence or Adjust Status. The director denied the I-130 petition and the petitioner's corresponding Form I-485, based on the denial of the I-130 petition.

The petitioner filed the instant Form I-360 on December 29, 2008, and concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On October 26, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite abuse and good-faith entry into the marriage. On January 21, 2010, the petitioner responded with additional evidence. On February 16, 2010, the director denied the instant I-360 petition because the petitioner did not establish that his wife subjected him to battery or extreme cruelty during their marriage, and that he married her in good faith. On March 19, 2010, the petitioner, through counsel, timely appealed the denial of the instant I-360 petition.

On appeal, counsel asserts that the petition should be approved, as the documentary evidence, which includes an expert witness, demonstrates that the petitioner "suffers from Axis I mental illness, stemming precisely from his wife's extremely cruel behavior: the deception regarding her pregnancy by another man." Counsel also asserts: "A joint account, a lease, utility bills should be sufficient to show cohabitation and *bona fides* when it was only several months after the marriage that the wife revealed her secret to Petitioner."

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that his wife subjected him to extreme cruelty during their marriage:

- The petitioner's statement dated December 18, 2008, submitted at the time of filing; and his statement dated January 19, 2010, submitted in response to the director's October 26, 2009 RFE;
- A pregnancy report for S-W-; and
- A mental status evaluation dated November 25, 2008, from [REDACTED] Licensed Professional Counselor.

In his December 18, 2008 statement submitted at the time of filing, the petitioner states, in part, that around October 2006, following his June 12, 2006 marriage to S-W-, S-W- told him that she was pregnant with a baby conceived by another man prior to their marriage. The petitioner states that "over time" he concluded that their relationship "was not going to work out due to the lack of trust resulting from her deception." The petitioner also states, "Her actions have driven me into depression and insecurity, and I have found myself isolated from society."

In his January 19, 2010 statement submitted in response to the director's RFE, the petitioner states, in part, that he "suffered extreme cruelty, isolation, and humiliation because of [S-W-'s] actions." The petitioner also states that he has not made much progress in his professional life due to his depression

and isolation caused by S-W-'s pregnancy by another man. The petitioner states: "As for seeing professional help, I was not able to afford the costs associated with seeing a doctor or counselor on a regular basis. . . . I have never applied for or received public assistance and did not wish to apply for it to help me with the costs associated with seeking professional help."

On appeal, counsel states: "It is deeply-held [sic], cross-culturally prevalent wound to men to run the risk of raising another man's child. . . . Petitioner now suffers from an Axis I mental illness, stemming precisely from his wife's extremely cruel behavior: the deception regarding her pregnancy by another man."

In her mental status evaluation dated November 25, 2008, Ms. [REDACTED] Licensed Professional Counselor, states, in part, that the petitioner reports that he "never sought help for his depression because seeing a therapist is not a part of his cultural background," and that he feels "depressed and scared most of the time." Ms. [REDACTED] diagnoses the petitioner with "Major Depressive Disorder, Severe."

The AAO acknowledges the petitioner's statements and the mental status evaluation from Ms. [REDACTED]. The petitioner's statements and his history, as he reported it to Ms. [REDACTED] contain inconsistencies regarding the petitioner's claimed abuse from S-W-. For example, although the petitioner asserts in his January 19, 2010 statement that he did not seek professional assistance because he was unable to afford the costs, he reports to Ms. [REDACTED] that he never sought help because "seeing a therapist is not a part of his cultural background." In addition, while he reports feeling "depressed and scared most of the time" to Ms. [REDACTED] he does not mention feeling scared in either of his personal statements. The record contains no explanation for these inconsistencies. It is also noted that while Ms. [REDACTED] states that the petitioner "presented [himself] to [her] office on November 25, 2008 for a mental status evaluation," she does not specify the length of her evaluation session with the petitioner. Moreover, although she diagnoses the petitioner with "Major Depressive Disorder, Severe," Ms. [REDACTED] does not indicate that she herself treated or recommended any treatment for the petitioner.

While we do not question the expertise of Ms. [REDACTED], her testimony fails to establish that the behavior of the petitioner's wife rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). While Ms. [REDACTED] reiterates a description of the petitioner's history, she also mentions information reported by the petitioner that either is not mentioned in or conflicts with his December 18, 2008 or January 19, 2010 statements, which detracts from the probative value of Ms. [REDACTED] testimony. In sum, Ms. [REDACTED] does not provide substantive, probative information indicating that the petitioner was subjected to actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

In this case, we do not find the petitioner's evidence sufficient to meet the petitioner's burden of proof. The petitioner does not claim and 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, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also has not resolved the inconsistencies and/or deficiencies discussed herein that diminish the evidentiary value of his statements. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In addition to the documentation listed above, the record also contains the following evidence relevant to the petitioner's claim that he married his wife in good faith:

- The petitioner's 2007 and 2008 federal income tax returns, reflecting his filing status as "married filing separately," and listing S-W- as his spouse;
- Two Bank of America account statements for the period from August 21, 2006 through October 10, 2006, listing the petitioner and S-W- at the "[REDACTED]" address;
- Three energy bills for the period from July 20, 2006 through October 18, 2006, addressed to the petitioner and S-W- at the "[REDACTED]" address; and
- An apartment lease contract dated June 8, 2006, for the "[REDACTED]" address, listing the petitioner and "add[ing] [S-W-] to lease."

In his December 18, 2008 statement submitted at the time of filing, the petitioner states, in part, that he met S-W- in February 2006, and that they dated for a few months and grew to love each other. The petitioner also states, "Around May 2006, we broke up but later on we got back together." The petitioner states that he and S-W- were married on June 12, 2006, "and also filed the immigration applications because [he] wanted to pursue a new life in the US with [S-W-]."

On appeal, counsel asserts that the petitioner has submitted sufficient evidence "to show cohabitation and *bona fides* when it was only several months after the marriage that the wife revealed her secret to Petitioner."

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). The petitioner, however, has submitted scant evidence to support a finding that he entered into his marriage in good faith. As stated by the director, the bank statements reflect minimal activity, and the record contains no evidence that both the petitioner and S-W- used the account. In addition, although the director states in his February 16, 2010 decision that the apartment lease does not include S-W-'s child born in 2004, neither counsel nor the petitioner addresses this issue on appeal. The petitioner has not submitted probative evidence of how he met his wife, their courtship, decision to marry, and shared experiences, apart from the alleged abuse. 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.

The petitioner has not demonstrated that his wife subjected him to battery or extreme cruelty during their marriage, and that he married her in good faith. 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.