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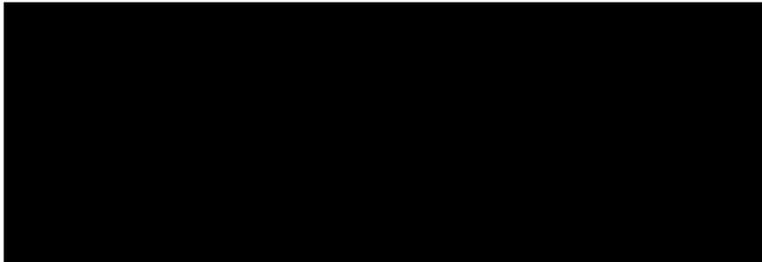
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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Office: VERMONT SERVICE CENTER Date: **NOV 05 2010**

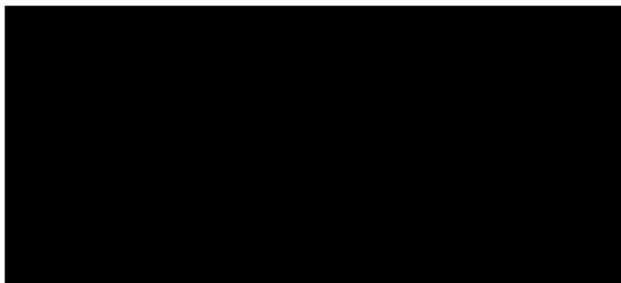
IN RE:

Petitioner:



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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 his United States citizen spouse.

On June 11, 2010, 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 and that he had failed to establish that he entered into the marriage in good faith.

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

\* \* \*

(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.

\* \* \*

(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 Mexico. He claims to have entered the United States in or about 1993 without inspection. On January 10, 2001, the petitioner married C-T-<sup>1</sup>, the claimed abusive United States citizen. The record includes a Judgment of Divorce terminating the marriage on October 24, 2008. On April 9, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On the Form I-360, the petitioner indicated that he had resided with C-T- from September 2000 to April 2001.

#### *Abuse*

The petitioner initially provided a personal statement dated February 14, 2009. The petitioner declared: about a month after he married C-T-, she lost her job and as time went on, he noticed that she started looking sicker and sicker; that she would stay at home all day; that she would stay out late at night or not come home at all; and that she would scream at him and tell him to leave her alone when he asked her about her illness. The petitioner indicated that during this time he and C-T- continued to be sexually active and would have relations without the use of a condom. The petitioner indicated: that he noticed that C-T- would steal his money and other items; that he found out she was collecting welfare and other benefits from the government; and that whenever he confronted C-T- about his concerns she would behave erratically and threaten to call immigration authorities on him if he told anyone what she was doing. The petitioner reported: that one day he received a call from the hospital and was informed that C-T- was in the hospital; that a doctor at the hospital told him that C-T- had AIDS; and that he was terrified at this news because he and C-T- had had unprotected sex. The petitioner indicated further: that when C-T- came home from the hospital, she told him that she had been HIV positive for years; that she laughed at the fact that she had never told him; that she told him that she got AIDS from a needle; that she had been using crack and cocaine all along; and that she had unprotected sex with other men while she and the petitioner were married. The petitioner noted that he knew that C-T- had used drugs before they met and “seldom drank alcohol but [he] never knew she was abusing such serious drugs under [his] nose.” The petitioner declared further that he immediately told C-T- that she and her daughter must leave the apartment and that he was devastated and very afraid that he had contracted the disease. The petitioner noted that he last saw C-T- a few months ago when she signed their divorce papers.

The record also included a psychological evaluation prepared by [REDACTED], dated February 19, 2009, the day after [REDACTED] indicated he had interviewed the petitioner. [REDACTED] reported that the petitioner told him that soon after the couple married, C-T- verbally, physically, sexually, and psychologically abused him. [REDACTED] indicated that the petitioner reported: that C-T- withheld information that she had AIDS; that she called the petitioner derogatory names; that she

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

grabbed him, pushed him, pulled his hair, spat on the floor in front of him to mock him, kicked him and threw whatever she had in her hands at him including food and glasses; that she forced him to have sexual intercourse when he did not want to engage in sex, made him kiss her vagina, and requested that he anally penetrate her, that they have sex during her menstrual period, and on one occasion he discovered C-T- in bed, naked with another woman. [REDACTED] further indicated that the petitioner reported that C-T- was frequently drunk and was more aggressive while drunk and that she used crack cocaine and sniffed cocaine. [REDACTED] indicated that the petitioner reported that after three or four months, the petitioner told C-T- to leave the house. [REDACTED] noted that the petitioner had been afraid to have a relationship with a woman until 2007 and that now he lives with a woman and their child. [REDACTED] diagnosed the petitioner during his marriage to C-T- with Major Depressive Disorder.

On January 6, 2010, the director issued a request for evidence (RFE) in which the director specifically noted the disparate versions of the alleged abuse submitted by the petitioner and that which appeared in [REDACTED] evaluation. In response, counsel for the petitioner asserted that the petitioner had been embarrassed to discuss his abuse with a female paralegal and that both versions of the abuse were completely true and accurate. Counsel submitted the petitioner's February 25, 2010 statement in which he declared that he was embarrassed about the way his ex-wife had treated him and that it was difficult to open up to the paralegal because she was a woman. In a separate statement also dated February 25, 2010, the petitioner adopted the statements listed in [REDACTED] report verbatim.

Counsel for the petitioner also submitted a March 17, 2010 affidavit signed by [REDACTED] the petitioner's next door neighbor. [REDACTED] declared that she heard screaming from the petitioner's apartment and that most of the screaming was from C-T- who would call the petitioner horrible names and tell him to get out of the house often.

The director determined that the petitioner's supplemental statements were insufficient to overcome the inconsistencies in the record regarding the claimed abuse and found that the petitioner lacked credibility. The director also noted that the petitioner had not provided evidence that C-T- had AIDS as he claimed. The director determined that the petitioner had not established that he had been subjected to extreme cruelty and that the record did not demonstrate his eligibility for the benefit he is seeking.

On appeal, counsel for the petitioner compares the credibility standard used in asylum applications to that of the credibility standard used for VAWA petitions and asserts that even if evaluated under the lax standard of an asylum credibility determination, the director's negative credibility finding must be overturned. Counsel contends that the petitioner provided detail regarding his discovery that C-T- had AIDS and that the inconsistencies in the record pointed out by the director were minor and were not in fact inconsistent. Counsel claims that the petitioner's supplemental statement in response to the director's RFE merely offered more detail than in his original statement. Counsel avers that the petitioner has been subjected to both physical and sexual abuse as described in [REDACTED] evaluation and the petitioner's supplemental affidavit, and has been subjected to extreme cruelty by

C-T-'s intentional exposure of the petitioner to AIDS. Counsel contends that United States Citizenship and Immigration Services (USCIS) improperly required the petitioner to submit proof that C-T- had AIDS. Counsel asserts that the petitioner's statements, the evaluation of [REDACTED], and the statement of the petitioner's neighbor demonstrates that the petitioner was subjected to extreme cruelty perpetrated by C-T-.

Section 204(a)(1)(J) of the Act sets out the evidentiary standard applicable in VAWA matters and requires USCIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of" USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

The petitioner in this matter initially provided a general statement noting his former spouse's illness, her erratic behavior, and his discovery that she used drugs and had contracted AIDS. The petitioner also implied that C-T- had misused government benefits and that when she was confronted with her behavior she would threaten the petitioner with calling the immigration authorities. The petitioner's initial statement does not include evidence that he was subjected to any form of battery. The petitioner's reference to the failure of his former spouse to tell him that she had AIDS and his former spouse's threats of calling the immigration authorities do not include the necessary detail to establish that the petitioner was subjected to extreme cruelty. The petitioner in his supplemental statement again does not provide detail regarding any specific act of physical or mental abuse. The supplemental statement simply mimics the general information reported in [REDACTED] evaluation. There is no information regarding the specifics of any incident of name calling or food and glasses throwing; there is no information regarding the circumstances of the petitioner's refusal to have sex; there is no information regarding the petitioner's discovery of C-T- in bed with another woman; and there is no information regarding the particulars of C-T-'s drug and alcohol abuse. It is the lack of definitive descriptions of specific acts of the claimed abuse that undermines the credibility of the petitioner's testimony. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents to result in a conclusion that the petitioner was subjected to such abuse. In this matter the petitioner has failed to provide such detailed information.

The failure of the petitioner to report significant incidents of the claimed abuse in his initial statement is not ameliorated by his statement that he was uncomfortable reciting this information to a female paralegal. The petitioner failed to report initially that his former spouse threw food at him, that she was frequently drunk and was more aggressive while drunk, that she called him specific derogatory names, and that she grabbed him, pushed him, pulled his hair, spat on the floor in front of him to mock him, and kicked him. The petitioner does not adequately explain why, when describing an abusive relationship, he would fail to mention such acts. The escalation of the nature and type of abuse in response to the director's RFE is inconsistent testimony on the part of the petitioner which further undermines the credibility of his testimony. The generality and inconsistency of the petitioner's statements do not allow an informed decision regarding the credibility of the statements.

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 affidavit submitted on the petitioner's behalf does not provide any information about specific incident(s) of abuse. The affiant does 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.

Upon review of the evaluation prepared by [REDACTED] interviewed the petitioner once, almost eight years after the petitioner's separation from his spouse. In addition, [REDACTED] reported incidents of alleged abuse that the petitioner did not report in his initial personal statement. As indicated above, the failure of the petitioner to adequately address the addition of significant, although generalized events, in his testimony to [REDACTED] amounts to inconsistent testimony on the part of the petitioner. [REDACTED] evaluation fails 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. Further, [REDACTED] does not offer examples and analysis of the causal relationship of specific abuse that is consistently detailed to his diagnosis of the petitioner's major depressive disorder during his marriage to C-T-. Upon review, [REDACTED] evaluation is not probative and does not establish that the petitioner was subjected to battery or extreme cruelty.

The inconsistencies in the petitioner's testimony to USCIS and to others, when the testimony is already limited and general, significantly reduce the probative value of the petitioner's testimony. The petitioner does not provide detailed information regarding the circumstances of events sufficient to conclude that the petitioner's spouse's behavior constituted battery or extreme cruelty. Moreover, the petitioner's spouse's behavior is too general to provide a complete understanding of the circumstances of the petitioner's marital relationship. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> 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 unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." The petitioner has failed to establish that his spouse's actions rose 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. Upon review of the totality of the information in the record, including the petitioner's testimony, the statement of [REDACTED] and the [REDACTED] evaluation, the record does not provide sufficient probative evidence to demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty. 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 has failed to do so.

### *Good Faith Entry into Marriage*

The petitioner has also failed to establish that he entered into the marriage in good faith. The petitioner's statements indicate generally that he met C-T- in 2000 when a friend and neighbor introduced him; that C-T- lived in the same complex as he did; that after their introduction they hit it off and exchanged contact information; and after a month of talking on the phone and casual visits in each others' apartments, they went out on a date to a particular restaurant. The petitioner also stated: that he and C-T- dated seriously for three months; that he then asked her and her daughter to move in with him; and that a few months after living together, he proposed marriage by getting down on one knee and giving her a ring that he had purchased. The petitioner also provided a March 22, 2010 affidavit signed by C-T-'s daughter who declared: that the marriage between the petitioner and C-T- was real; that they lived together while they were married; and that she had a close relationship with the petitioner. The record also included photographs of the couple on one or two occasions.

The director determined that the evidence submitted did not establish the petitioner's intent in entering into the marriage. Counsel asserts that the petitioner's statement, the statement of his stepdaughter, and the statement of the neighbor who heard the arguing, all demonstrate that the petitioner entered into the marriage in good faith.

We disagree. A finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a bona fide marriage. The petitioner's statements do not provide any specific information regarding his intent in entering into the marriage. In this matter, the petitioner provided only a cursory description of his introduction and interactions with his spouse prior to the marriage and during the marriage, other than as his interactions related to the alleged abuse. The petitioner's remaining, relevant testimony is general and insufficient to establish that he entered into the marriage in good faith.

The affidavits submitted on his behalf, also fail to include information regarding the shared experiences of the couple. Although the petitioner's stepdaughter noted her belief that marriage was a real marriage, she does not provide any information regarding the interactions of the couple and she does not relate her observations of specific incidents or events that would assist in establishing the petitioner's intent when entering into the marriage. Similarly, the petitioner's neighbor, Ms. Fernandez, speaks only of the alleged arguing she heard; she does not report her observations of the

interactions of the couple prior to or during the marriage and she does not provide any evidence of the petitioner's intent when entering into the marriage. Likewise, photographs of the couple on one or more occasions are insufficient to establish the petitioner's intent when entering into the marriage. The lack of specific information fails to demonstrate that the petitioner's intent was to enter into the marriage in good faith. The general statements submitted do not substantiate that the petitioner's intent upon marrying C-T- 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.

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 the marriage in good faith. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with C-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the director's decision, we find that the petition is also not approvable because the record fails to establish that the petitioner has a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen and is eligible for immediate relative classification based on a qualifying relationship with his former spouse. An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As previously noted the petitioner in this matter was divorced from his spouse on October 24, 2008 and filed the instant Form I-360 on April 9, 2009. As the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his former spouse, he has also failed to make the causal connection between his divorce and any abuse. Accordingly, the petitioner is also not eligible for the benefit he seeks because he has not established a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen, and also failed to establish that he is eligible for immediate relative classification based on a qualifying relationship with his former spouse.

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 (9<sup>th</sup> 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, with each considered as a separate and independent alternative basis for the decision. 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.