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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

**PUBLIC COPY**



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FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date: SEP 23 2010

IN RE: Petitioner: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

Perry Rhew  
Chief, Administrative Appeals Office

**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. The director denied the petition because the petitioner did not establish that he was battered or subjected to extreme cruelty by his U.S. citizen spouse or that he married her in good faith. On appeal, counsel submits 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 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:

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

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(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 Morocco. He initially entered the United States on or about December 13, 2002 as an F-1 student. On October 25, 2005, the petitioner married M-P-<sup>1</sup> the claimed abusive United States citizen spouse. On or about February 17, 2006, M-P- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-130 was denied on April 2, 2009 as evidence in the record established that the couple divorced on October 17, 2007. As the petitioner's Form I-485 was based on the Form I-130, the petitioner's Form I-485 was also denied. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on May 5, 2009. The petitioner claimed on the Form I-360 that he resided with M-P- from October 2005 to May 2007.

#### *Abuse*

The petitioner initially submitted a March 30, 2009 personal statement. The petitioner noted: that M-P-'s family saw him "as an unwelcomed alien;" that M-P- called him derogatory names; that she called him derogatory names in front of his family and friends; that when his brother told her she should not use such offensive names, M-P- "kicked everyone out;" that when he tried to talk to her about it she threw a cup of hot coffee at him; that in late August 2006, she went to Houston and when she returned she did not want to talk about the trip; that she would often spend the night with her sister; that on September 11, 2006 M-P- called him while intoxicated and said hurtful things regarding his ethnicity and religion; that the next day when he yelled at her for her hurtful actions, she threw CDs, shoes, and the remote at him and then left; that he and M-P- fought many times during the month of Ramadan; that in mid-November she told him she was pregnant; that in the first week of April, he came home to find that M-P- had taken her clothes and left; and that when he finally talked with her, she told him that the child was not his child but her ex-boyfriend's child and that she had been having an affair with her ex-boyfriend since she had gone to Houston.

The petitioner also submitted five affidavits from friends and family. In the affidavit of [REDACTED] [REDACTED] sworn to on April 28, 2009, [REDACTED] noted that at some point M-P- changed and that the petitioner seemed unhappy and depressed and that he had developed a heavy smoking habit since his marriage. In the April 28, 2009 affidavit of [REDACTED] declared that the petitioner told him how M-P- treated him during the marriage and that when the petitioner found out that M-P- had cheated on him, he changed completely, never smiling and always unhappy and not wanting to meet with friends due to embarrassment. In the petitioner's sister's affidavit, sworn to on April 23, 2009, the petitioner's sister declared that the petitioner told her that M-P- called him racist names and that when the petitioner visited her in March 2007 he looked very depressed. In the petitioner's brother's affidavit sworn to on April 28, 2009, the petitioner's brother declared that M-P-

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

used to humiliate the petitioner in front of him and the petitioner's friends and that on one occasion when he tried to speak up, M-P- kicked them out and threatened to call the police. The petitioner's brother also noted that the petitioner was very hurt and unhappy when he found out that M-P- had been cheating on him. In the April 28, 2009 affidavit of [REDACTED], [REDACTED] declared that he witnessed M-P- and the petitioner arguing and that she yelled, cursed, and called the petitioner derogatory names.

The petitioner further submitted a psychological evaluation prepared by [REDACTED] pursuant to evaluations of the petitioner conducted on March 31, 2009 and April 3, 2009. [REDACTED] repeated the information the petitioner had provided in his March 30, 2009 statement. [REDACTED] opines: that the petitioner has been a victim of extreme and consistent mental cruelty by his former spouse. [REDACTED] noted that M-P- had been "verbally and physically abusive and even violent towards [the petitioner]" and that in the Moroccan culture, a wife's infidelity was a stigma in the community and dishonored the husband's name and honor in the larger community. [REDACTED] concluded that the petitioner had suffered severe emotional and physical abuse and that the petitioner's marriage had scarred him for life, and that forcing the petitioner to leave the United States would further exacerbate his condition. [REDACTED] found that the petitioner "suffers from significant level of clinical Depression, which appears to stem primarily from the trauma and consistently increasing stress that he has faced while struggling to save his marriage."

In response to the director's request for further evidence (RFE) on this issue, the petitioner submitted a second personal statement dated February 4, 2010. The petitioner added to his initial statement by indicating that he and M-P- had agreed that she could spend all the holidays with her family and that later she refused to spend religious holidays with him and his friends. The petitioner also added that the day after she had called him while intoxicated, in addition to throwing CDs, shoes, and the remote at him, she also bit him on the arm and scratched his face and threw glasses of water at him before she left.

The petitioner also submitted a second report prepared by [REDACTED] dated February 2, 2010. [REDACTED] reported that the petitioner had been seen for individual psychotherapy sessions on March 4, 2009, April 1, 2009, April 15, 2009, April 22, 2009, May 8, 2009, May 22, 2009, May 29, 2009, June 5, 2009, June 12, 2009, June 19, 2009, June 26, 2009 and July 3, 2009. [REDACTED] noted that the petitioner examined his experiences in marriage from different perspectives and new insights were developed and that after 12 sessions of individual psychotherapy, the petitioner's progress was reviewed and it was mutually decided that the petitioner was stable enough to successfully terminate the psychotherapeutic process.

Upon review of the petitioner's statements, the affiants' statements on his behalf, and [REDACTED] evaluations, the director determined that the petitioner had not provided evidence that he was subjected to battery or extreme cruelty. The director determined that the information the petitioner provided showed the problems he experienced were due to a failed marriage. The director also noted that the petitioner's addition of the physical battery of biting and scratching him on one occasion, after being put on notice that the initial evidence submitted was insufficient, raised questions regarding the

credibility of the petitioner's testimony. The director concluded that the record did not contain credible evidence establishing that the petitioner had been battered or subjected to extreme cruelty perpetrated by his spouse during the qualifying relationship.

On appeal, counsel for the petitioner asserts that the petitioner's spouse's adultery constitutes abuse and that the psychiatric evaluation supports the petitioner's claim of abuse. Counsel observes that the petitioner pointed out that he had been mentally abused and humiliated by his spouse and that the petitioner had provided third party eye witnesses to the abuse, that the petitioner's spouse committed adultery and conceived a child with another man, that the applicant sought psychiatric help, and that the petitioner's spouse has not disputed any facts that she was mentally cruel to the petitioner.<sup>2</sup>

Upon review of the petitioner's statements in support of the petition, the AAO finds that the petitioner has not established that he has been subjected to battery or extreme cruelty. As the director determined, infidelity and abandonment are not actions that are considered extreme cruelty under the statute and regulations. Rather, 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 former 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. Moreover, conceiving a child outside the marriage although emblematic of the disintegration of the marriage is not considered extreme cruelty under the statute and regulation. The petitioner's statements that M-P- called him derogatory names, that on one occasion she threw things at him when he demanded that they discuss her behavior, and that she kicked his brother and his friends out of the house during an argument are not actions that constitute battery or extreme cruelty. The AAO also shares the director's concern with regard to the escalation in the severity of the abuse described by the petitioner over the course of the petition. The addition of biting and scratching on the one occasion the petitioner had previously described as not including a form of physical contact undermines the petitioner's testimony regarding this incident. The AAO agrees with the director's conclusion that this escalation amounts to inconsistent testimony on the part of the petitioner.

Moreover, there is no information in the record detailing specific credible instances of abuse that could be categorized as battery 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. Name calling, arguing, adultery, and conceiving a child with another man are not incidents of abuse that constitute battery or extreme cruelty as set out in the statute and regulation. In this matter, the petitioner's testimony does not establish that he has been subjected to battery or extreme cruelty.

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<sup>2</sup> Counsel notes that the petitioner's divorce decree indicates that M-P- had been guilty of mental cruelty towards the petitioner in that she had committed adultery.

The AAO has reviewed the affidavits from the five individuals offering evidence on the petitioner's behalf. Each affiant noted that the petitioner seemed unhappy and depressed. [REDACTED] indicated that the petitioner had told him how M-P- treated him during the marriage. The petitioner's sister indicated that the petitioner told her that M-P- called him racist names. The petitioner's brother indicated that he had witnessed M-P- humiliating the petitioner in front of him and had been asked to leave when he confronted M-P-. [REDACTED] stated generally that he witnessed an argument between the petitioner and M-P- and that M-P- "yelled, cursed, and called [the petitioner] many names." Thus, only the petitioner's brother and [REDACTED] indicate that they witnessed any of the claimed marital discord and attest only to M-P-'s use of derogatory names. These two affiants, however, do not provide the necessary detail of the circumstances of the argument and name calling to conclude that these instances constituted extreme cruelty. The affiants do not provide sufficient evidence to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by M-P-.

The AAO has also reviewed the evaluations prepared by [REDACTED] regarding the petitioner's mental condition. The AAO first observes that neither counsel nor the petitioner addresses the inconsistency noted by the director regarding the dates that the petitioner allegedly attended psychotherapy sessions, casting doubt upon the legitimacy of the number of the sessions and raising concern regarding [REDACTED] evaluations. Second, although [REDACTED] opined that the petitioner had been a victim of extreme and consistent mental cruelty by his former spouse, [REDACTED] bases his opinion on the same information the petitioner provided in his initial statement to United States Citizenship and Immigration Services (USCIS). As the director determined and the AAO affirms, the petitioner's initial testimony did not provide evidence that the petitioner had been subjected to abuse. As noted above, adultery and conceiving a child outside the marriage do not constitute extreme cruelty under the statute and regulation. Moreover, [REDACTED] does not identify specific abuse as set out in the statute and regulation or any underlying trauma as causative or contributing factors in the petitioner's mental health condition. Thus, the AAO does not find that the evaluations prepared by [REDACTED] are probative in establishing that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse, as battery and extreme cruelty are defined in the statute and regulation.

When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of battery or extreme cruelty. Although the petitioner's divorce decree identifies M-P-'s adultery as mental cruelty, adultery does not constitute the extreme cruelty envisioned by Congress under the pertinent statute and regulation. The claims made by the petitioner and the general statements submitted on his behalf fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that his former spouse'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 him. The record is simply insufficient in this regard. The petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his spouse.

#### *Good Faith Marriage*

The AAO has reviewed the director's thorough and articulate discussion of the petitioner's general statement regarding his introduction and interactions with M-P- and the documentary indicia submitted in support of the petitioner's claim that he entered into the marriage in good faith. The director's discussion and determination are incorporated herein by reference. The AAO finds that as the petitioner did not provide additional testimony on this issue on appeal and counsel did not provide further argument or discussion regarding the director's decision on appeal, there is no basis to withdraw the director's determination on this issue. The petitioner has not established that he entered into the marriage in good faith.

### *Qualifying Relationship*

Beyond the decision of the director, the petitioner had not established a qualifying relationship with M-P- because his marriage to M-P- was terminated on October 17, 2007. Although the petitioner filed the Form I-360 petition within two years of the termination of his marriage, the petitioner has not demonstrated "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). Upon review of the record, the AAO reiterates that the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his former spouse as those terms are defined in the statute and regulation. Thus, there is no causal connection between the termination of the marriage and battering or extreme cruelty by the United States citizen spouse and no qualifying relationship existed when the petition was filed. Also beyond the director's decision, the present record fails to establish that the petitioner was eligible for immediate relative classification based on his relationship with M-P-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. Because the petitioner did not establish the validity of his marriage to M-P-, when the petition was filed, he is also ineligible for immediate relative classification based on his former marriage.

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 an independent and alternative basis for the decision. 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.

**ORDER:** The appeal is dismissed. The petition is denied.