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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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FILE:

Office: VERMONT SERVICE CENTER

Date: SEP 23 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, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

On April 15, 2010, the director denied the petition, determining that the petitioner had not established that he had entered into the marriage in good faith and that he is a person of good moral character.

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

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

Section 204(a)(1)(J) of the Act states, in pertinent part:

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

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

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a

minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

\* \* \*

(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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

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

non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

\* \* \*

(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 Thailand. He entered the United States on or about March 29, 2001 as a C-1, crewman. On November 2, 2008, the petitioner married B-S-<sup>1</sup>, the claimed abusive United States citizen spouse. On November 14, 2008, B-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf which was approved on April 13, 2009. On June 15, 2009 the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant and concurrently filed a Form I-485, Application to Register Permanent Resident or Adjust Status. On the Form I-360, the petitioner indicated that he had resided with B-S- from August 2008 to May 2009.

*Good Moral Character*

Preliminarily, the AAO observes that counsel for the petitioner provided a police clearance issued by the State of California indicating that a record review based on the petitioner's fingerprints did not identify a criminal history for the petitioner in the State of California. As the California clearance completes the record regarding any criminal history arising at the petitioner's places of residence, the AAO withdraws the director's determination that the petitioner has not established that he is a person of good moral character.

*Good Faith Entry into Marriage*

The AAO affirms the director's decision that the petitioner failed to establish that he entered into the marriage in good faith. The AAO has reviewed the petitioner's statements and finds that the petitioner failed to provide probative testimony regarding his intent when entering into marriage with B-S-. In the petitioner's June 1, 2009 personal statement, the petitioner indicated: that he met [REDACTED]; that he sent a drink to her table and the couple exchanged phone numbers; that over the next several weeks he and [REDACTED] became very close, talking on the phone everyday and seeing each other several times a week; that he proposed in

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

August 2008 because he did not want to spend another day not being married to her; that she accepted his proposal and asked him to move in with her; and that they married on November 2, 2008. The remainder of the petitioner's personal statement discusses the alleged abuse.

The petitioner also provided affidavits from [REDACTED]. In the June 1, 2009 affidavit of [REDACTED] declared: that he lived in Florida; that he met the petitioner in 2003; that the petitioner moved to California in April of 2008; that the petitioner told him shortly after his move to California that he had begun a romantic relationship with a woman he had met; that in August 2008, the petitioner informed the affiant that he was very much in love and had asked [REDACTED] to marry him; and that the petitioner told him that he had moved in with B-S- and they were planning their wedding.

In the June 4, 2009 affidavit signed by [REDACTED], she declared: that when she met the petitioner it was love at first sight; that while she was having dinner at a restaurant, the petitioner sent over a drink and that she felt an immediate connection with him; that they exchanged telephone numbers and continued to talk to each other on a daily basis; that they had numerous dates and began an intimate relationship; that in August 2008 the petitioner asked her to marry him, she accepted and soon after the petitioner moved in with her; that they married on November 2, 2008; and that she had no doubt that the petitioner married her for love and intended for them to live their lives together as a married couple.

The initial record also included: an unsigned Internal Revenue Service (IRS) Form 1040, U.S. Individual Tax Return, showing the couple married filing jointly; correspondence from an insurance company that did not identify a beneficiary; and photographs of the couple at an outdoor function and on one other occasion.

In response to the director's request for further evidence (RFE) the petitioner submitted a second personal statement which addressed the alleged abuse perpetrated by his spouse but did not discuss the issue of his good faith in entering into the marriage. The petitioner provided a photocopy of a T-Mobile bill for a service cycle ending March 8, 2009 that was addressed to both the petitioner and [REDACTED]. The petitioner also provided affidavits signed by [REDACTED]. In the March 12, 2010 affidavit signed by [REDACTED] declared: that she has known the petitioner for about ten years and [REDACTED] for about six years; that she had witnessed the couple residing together as mutual friends and neighbors; that she had visited their home; that they had visited her home; and that they lived and resided together in a mutually caring and loving marital relationship. In the March 12, 2010 affidavit of [REDACTED] declared: that she had known the petitioner and B-S- about six years; that she had witnessed the couple residing together as a couple since August 2008 as a mutual friend; that she had participated in social gatherings at their home, her home, and friends' homes; and that she had knowledge that they lived and resided together in a mutually caring and loving marital relationship.

The AAO observes that the record also included the petitioner's Form G-325A, Biological Information, indicating that the petitioner lived in Florida from May 2001 to October 2008 and lived

in California from October 2008 to the signature date on the Form G-325A, November 2, 2008.

On appeal, counsel for the petitioner submitted an undated handwritten note allegedly signed by ■■■- indicating that she needed time away from the petitioner and indicating that maybe he could move back to Florida with his friends. Counsel also submitted three greeting cards allegedly exchanged between the couple.

Upon review of the petitioner's statements, the AAO does not find that the petitioner has provided any specific information regarding his intent in entering into the marriage. 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. 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 AAO also observes that the petitioner has provided inconsistent information regarding the date he allegedly moved in with B-S-. The petitioner indicated in his initial statement that he moved in with ■■■ in August 2008 after he had proposed but indicated on the Form G-325A that he continued to live in Florida until October 2008. Upon review, the petitioner's testimony is general, includes inconsistencies regarding his move to California and thus the timing of his random introduction to ■■■, and fails to provide relevant probative evidence that establishes that he entered into the marriage in good faith.

The AAO has also reviewed the affidavits from the petitioner's friends and from ■■■-. The AAO observes that although ■■■- indicated her belief that the petitioner married her for love, she simply provided the same general information regarding their introduction and their interactions as noted by the petitioner in his initial statement. The affidavit of ■■■- is insufficient to establish the petitioner's intent in entering into the marriage. Similarly, the affidavit of ■■■ is general and as ■■■ lived in Florida he was unable to personally witness the interactions between the couple. The AAO acknowledges that ■■■ communicated with the petitioner telephonically and declared that he had visited the couple once; however, ■■■ does not provide any personal observations of the petitioner's allegedly good faith marriage. Upon review of the affidavits of ■■■ the AAO finds that the affiants speak generally of attending social gatherings and visiting the couple, but do not provide any probative details regarding the couple's actual interactions. The AAO also finds the length of time these affiants indicate that they have known the petitioner and ■■■, which predates the date that the couple randomly met in California and significantly predates the year the petitioner claimed to have moved to California, questionable. The generality of the affidavits submitted on the petitioner's behalf, the questionable timing of the affiants' friendship with the petitioner and ■■■-, and the failure to provide detailed observations of specific events or incidents, all demonstrate the lack of probative value of the affidavits. The statements are bare of the essential detail necessary to assist in determining the intent of the petitioner upon entering into the marriage.

The photographs submitted show that the petitioner and [REDACTED] were together on one or two occasions, but this evidence alone fails to establish the requisite good faith entry into the marriage. As the director determined, one phone bill and correspondence from an insurance company that does not identify a beneficiary or show that the couple maintained the insurance are insufficient to establish that the petitioner entered into the marriage in good faith. The AAO also finds the greeting cards submitted on appeal do not include probative evidence of the petitioner's good faith in entering into the marriage. The documents submitted as referenced above, are insufficient to establish that the petitioner intended to establish a life with [REDACTED]. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on his behalf also fail to support a finding that he entered into the marriage in good faith. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Residence*

Beyond the decision of the director, the AAO questions whether the couple actually resided together. The AAO again notes the discrepancy in the petitioner's statements and the information he supplied to United States Citizenship and Immigration Services (USCIS) on his Form G-325A regarding when he moved to California. The AAO also finds that the petitioner has not provided probative evidence that he actually lived at [REDACTED]. The AAO notes that the petitioner was listed on a phone bill and received correspondence from an insurance company at the Lancaster address. However, the record in this matter does not include consistent probative evidence of when or how long the couple allegedly resided together. The AAO acknowledges that the affiants declared that they witnessed the couple residing together as husband and wife through personal observations as friends and neighbors; however, as noted above the information in the affiants' statements regarding how long they had known the couple is questionable. In addition, none of the affiants provide a description of the apartment, describe the couple's shared belongings, or submit other information which would assist in demonstrating that the couple enjoyed a joint residence. The record does not offer probative evidence, including the petitioner's testimony and the testimony submitted on his behalf, that the couple resided together. The petitioner has failed to establish that he resided with [REDACTED] as required to establish eligibility for this benefit.

### *Abuse*

Also beyond the decision of the director, the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by [REDACTED]. In the petitioner's initial statement, the petitioner declared that shortly after the wedding, his wife began to ask him for money for groceries or gas in the car but he noticed that she often did not buy groceries or put gas in the car. The petitioner indicated that his wife's spending habits increased over the following weeks and he also noticed that she often would have nose bleeds. The petitioner noted that when he confronted [REDACTED] about her nose bleeds and her erratic shopping behavior she admitted that she had a drug problem and had been arrested for cocaine and marijuana possession in the past. The petitioner declared that he immediately stopped giving [REDACTED] the money she requested, suggested that she get help, and that she

responded by becoming aggressive and threatening to make him leave “her house.” The petitioner also noted several occasions when his wife stayed out all night, that when she was out and he communicated with her she was intoxicated, and that she came home drunk. The petitioner indicated that when his wife would come home she would often scream at him and demand money and that on Saturday, May 9, 2009 when he told her he did not have any money, she pushed him against a wall and called him derogatory names. The petitioner reported that [REDACTED] told him she was back with her boyfriend who supported her, that she did not need him anymore, and that she demanded that he take his clothes and immediately leave. The petitioner indicated that he left that day and returned to Florida to stay with a friend.

In the petitioner’s second affidavit submitted in response to the director’s RFE, the petitioner indicated that shortly after their wedding, his wife subjected him to money extortion and repeated the information contained in his first affidavit regarding her drug use. The petitioner added that in addition to his wife’s money extortion, verbal abuse, and drug and alcohol addiction, he also found out that she had been going out with her former boyfriend. He added further that one time when she had come home drunk, she told him that if did not provide more money to her she would call immigration. The petitioner emphasized that on May 29, 2009 she woke up screaming asking for money and that when he refused, she pushed him out of bed and then against the wall, called him derogatory names and told him that she was going back with her boyfriend.

The petitioner also provided affidavits from [REDACTED] who declared that when he met [REDACTED] she was a chain smoker and always seemed anxious and nervous and emotional. [REDACTED] added in his second affidavit that he witnessed [REDACTED] verbally abusing the petitioner during their visit to Florida and that the petitioner had told him of his other marital problems. In the affidavits of [REDACTED], both affiants noted that they were aware that the couple was having problems and that the couple separated on or about May 2009.

Upon review of the record, the AAO does not find that the petitioner’s statements provide the detailed, consistent, and probative evidence that establishes that he had been subjected to battery or extreme cruelty. The AAO acknowledges the petitioner’s claim that his spouse spoke to him in a derogatory manner, that she demanded money for her drug addiction, and that she participated in an extramarital affair. However, this behavior, as generally described, is not behavior that is 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 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.

The AAO also acknowledges the petitioner’s report that on either May 9 or May 29, 2009, [REDACTED] pushed him out of bed and then against the wall and told him he had to leave. However, there is

insufficient information in this statement to conclude that the petitioner was subjected to battery. The AAO observes the inconsistent reference to the date of this occurrence, as well as the lack of detailed information that the petitioner felt threatened by his wife's actions. The AAO also acknowledges the petitioner's general reference in his second statement that his wife threatened to call immigration if he did not give her the money she demanded. However, this general reference and the remainder of the petitioner's statements as well as the statements of others submitted on his behalf are insufficient to demonstrate that he was the victim of any act or threatened act of physical violence or extreme cruelty or that ■■■-s non-physical behavior was accompanied by any coercive actions or threats of harm or that her actions were aimed at insuring dominance or control over the petitioner. The record is simply insufficient in this regard.

The AAO 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 over money, ■■■'s drug addiction and infidelity 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 and the testimony of the affiants who submitted statements on his behalf do not establish that he has been subjected to battery or extreme cruelty. The petitioner in this matter has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by his spouse. For this additional reason, the petition may not be approved.

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

**ORDER:** The appeal is dismissed.