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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



B9

DATE: **APR 04 2011** Office: VERMONT SERVICE CENTER FILE: A79 480 173  
EAC 04 005 50383

IN RE: Petitioner: 

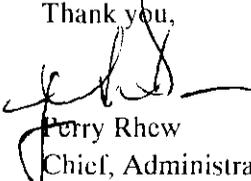
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 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, (“the director”) denied the immigrant visa petition and the Administrative Appeals Office (AAO) remanded the case for further action. The matter is now before the AAO on appeal of the director’s subsequent, adverse decision. The appeal will be dismissed.

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 former spouse.

The director denied the petition, finding that the petitioner failed to establish that he entered into marriage with his former wife in good faith, that she subjected him to battery or extreme cruelty during their marriage and that he was a person of good moral character.

On appeal, counsel submits a brief and copies of evidence previously filed.

#### *Relevant Law and Regulations*

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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision 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).

Section 204(a)(1)(J) of the Act further 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

\* \* \*

(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 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

(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.

#### *Pertinent Facts and Procedural History*

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of [REDACTED] who entered the United States on December 14, 2001, as the K-1 nonimmigrant fiancé of a U.S. citizen. The petitioner married his fiancée on December 20, 2001 in [REDACTED]. On November 20, 2002, the petitioner was convicted of assault against his spouse. On November 22, 2002, he was served with a Notice to Appear in immigration court, charging him as removable under section 237(a)(2)(E)(i) of the Act as an alien convicted of a crime of domestic violence. On April 14, 2003, the petitioner's assault conviction was dismissed, the case was refiled and the petitioner was convicted of a terroristic threat offense. On April 15, 2003, an immigration judge of the [REDACTED] Immigration Court terminated the removal proceedings against the petitioner. On September 4, 2003, the petitioner and his wife were divorced by order of the [REDACTED] District Court.

On October 2, 2003, the petitioner filed the instant Form I-360. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage, battery or extreme cruelty and good moral character. The petitioner, through prior counsel, requested and was granted additional time to respond and submitted further evidence on November 8, 2005. On January 20, 2006, the director denied the petition for lack of the requisite good-faith entry into the marriage, battery or extreme cruelty and good moral character. On appeal, the AAO concurred with the director's determinations, but remanded the case for compliance with the former regulation requiring issuance of a

Notice of Intent to Deny (NOID) prior to the denial of a self-petition. See 8 C.F.R. § 204.2(c)(3)(ii) (as in effect at the time the petition was filed). Upon remand, the director issued a NOID informing the petitioner of the three grounds of intended denial and providing him with an opportunity to respond. The petitioner, through counsel, responded to the NOID with a brief and additional evidence. The director determined that the additional evidence and counsel's claims were insufficient to establish the petitioner's eligibility and denied the petition for failure to establish the requisite battery or extreme cruelty, good-faith entry into the marriage, and good moral character.

On appeal, counsel submits a brief, which is nearly identical to that which he submitted in response to the NOID. Counsel also submits copies of documents previously filed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted after the AAO's prior decision was issued, fails to establish the petitioner's eligibility. Counsel's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

#### *Entry into the Marriage in Good Faith*

In his first, 18-page handwritten, undated statement submitted with the Form I-360 (hereinafter "first statement"), the petitioner reported that he and his former wife:

got acquainted [sic] on the net. She and her family came to [REDACTED] after I agreed to pay for everything (like plane ticket, hotel, and ...) then after two months she and her mom and her siblings came to [REDACTED] for the engagement party which again . . . I paid for the plane ticket to [REDACTED] . . . I came to America on K1 visa. I bought a lot of jewelries for my wife in [REDACTED] . . . . I also had a bank account in [REDACTED] which before my marriage I had about [REDACTED] in my account. Any way [sic] I spent all my money on this girl and even now I am on [sic] debt.

The petitioner did not further describe how he met his former wife, their courtship, engagement, wedding, honeymoon, joint residence or any of their shared experiences, apart from the alleged abuse.

In his second, 29-page handwritten, undated statement submitted in response to the RFE (hereinafter "second statement"), the petitioner attested, "I married my wife in good faith, I loved her but love is not enough for a good life. . . . I spent all my money on this marriage. Overall I lost more than [REDACTED] dollars that I gained in 28 years of my life." Again, the petitioner reiterated his monetary expenditures, but offered no further, probative testimony regarding his purportedly good-faith entry into marriage with his former wife.

In his third, five-page, undated statement submitted with his first appeal (hereinafter "third statement"), the petitioner reiterated that he paid for his former wife and her family to go to [REDACTED] to meet him and to go to [REDACTED] for the engagement party and that he paid for both the engagement party and wedding. The petitioner further stated that he took his former wife to [REDACTED] for their honeymoon and on several international and domestic trips during their marriage. The petitioner reported that he bought his former wife a car, rented a luxury apartment, bought her two suitcases of chocolates and paid for her education. Apart from detailing these expenses, however, the petitioner again provided no probative details

regarding his intentions in entering the marriage and his marital relationship, apart from the alleged abuse.

In his eight-page, undated affidavit submitted with his first appeal (hereinafter "affidavit"), the petitioner provided further details regarding how he met his former wife and the reasons they became close. He also described their engagement party and early plans for their marriage. However, the language, grammar and syntax of this affidavit differ greatly from that in the petitioner's three previous statements. These significant differences indicate that the language of the affidavit is not entirely the petitioner's own and detract from the document's credibility and probative value.

In the present appeal, counsel acknowledges that the different "grammar and syntax is the result of consultation and proper assistance of legal counsel," but asserts that the content of the affidavit is consistent with the petitioner's prior statements. Nonetheless, other relevant evidence in the record is inconsistent with the petitioner's statements in these proceedings. For example, the petitioner's description of how he met his former wife in the instant case contradicts his April 10, 2001 letter in which he stated, "I was introduced to my fiancé, through a family friend on April 19, 2000." In these proceedings, the petitioner repeatedly stated that he met his former wife through an Internet chat room. In the present appeal, counsel asserts that neither he nor the petitioner have any knowledge of this letter and the petitioner should have been advised of the derogatory information and been given a chance to respond pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i). The petitioner's April 10, 2001 letter was fully identified in our prior decision as having been submitted with his former wife's Form I-129F fiancé petition filed on his behalf. The letter is signed by the petitioner and counsel's assertion that the petitioner does not recall its contents is unpersuasive. The letter is not derogatory information of which the petitioner was unaware and no violation of 8 C.F.R. § 103.2(b)(16)(i) has occurred in these proceedings.

In our prior decision, we explained that the December 2, 2002 letter of the petitioner's former wife that was submitted to the immigration judge during the petitioner's removal proceedings also failed to support the petitioner's claim. In the letter, the petitioner's former wife stated:

My husband is an overall good husband for he is very family-oriented and is very passionate. I love him very much and I believe the feeling is mutual. Being that we married for love I believe that we can work through our problems with a little bit of counseling and his deportation will not help either of us in the future.

Apart from simply affirming their mutual love, the petitioner's former wife did not describe in detail the petitioner's behavior during their courtship, wedding, honeymoon, joint residence or any of their shared experiences, apart from the incident leading to the petitioner's arrest. In the instant appeal, counsel asserts that the letter is quoted out of context and that it was submitted to the immigration judge to recant "the wrongs she had done against him and [in] an attempt to absolve the petitioner of the alleged misbehavior." Counsel nonetheless acknowledges that the letter, when viewed separately, "may provide a weak argument" in support of the petitioner's claim of entering the marriage in good faith.

As explained in our prior decision, the relevant documents also fail to support the petitioner's claim. The lease and automobile purchase receipt indicate that the petitioner and his former wife resided and bought a vehicle together, but these documents alone do not establish the petitioner's good-faith in entering their marriage. The bank account printout is dated less than one month after the account was opened and does not show that both the petitioner and his former wife actually used the account.<sup>1</sup> The photographs indicate that an engagement party and wedding occurred and that the petitioner and his former wife were together on other occasions, yet the pictures alone do not establish that the petitioner entered into their marriage in good faith. The fiancé petition approval notice and adjustment application receipt letter confirm that the petitioner filed his adjustment application based on his status as the fiancé of his former wife, but the documents do not establish his own good-faith in entering the marriage.

In the instant appeal, counsel acknowledges that when viewed in isolation, the relevant documents "may not suffice," but that when all the pieces of evidence are considered "in conjunction with each other and the totality of the circumstances," they "support and enhance the petitioner's claim of [his] good-faith marriage." Counsel fails to acknowledge, however, the significant discrepancies between the petitioner's statements in these proceedings and other evidence of record, which seriously detracts from the credibility of his claim.

In our prior decision, we were unable to assess the relevance of the [REDACTED] bank account statement and jewelry receipts because they were printed in foreign languages and were not accompanied by certified translations, as required by the regulation at 8 C.F.R. § 103.2(b)(3). In response to the NOID, counsel submitted certified translations of these documents. The receipts show that the petitioner made seven purchases of jewelry and diamonds in [REDACTED] prior to his arrival in the United States, but two of the receipts are dated in March 2000, a month before the petitioner stated that he met his former wife in an Internet chat room. In addition, three of the receipts identify the purchaser as the petitioner's former wife, but are dated in January 2000, four months before the petitioner met his former wife and nearly two years before their marriage. In these proceedings, the petitioner never indicated that he met his wife prior to April 2000 or that she was in Iran prior to their engagement in March 2001. Counsel fails to explain these significant discrepancies on appeal.

The petitioner's January 24, 2001 French bank account statement indicates that the account was opened in early January and that four credits and one debit were made in that month, resulting in a balance of [REDACTED] which contradicts the petitioner's assertion that he had about [REDACTED] in his [REDACTED] account before his marriage. The petitioner's second [REDACTED] bank account statement dated August 22, 2002 reflects a negative balance of [REDACTED] Euros and lists 11 transactions in that month, the majority of which are identified as "Retirement CB." The [REDACTED] statements are for two different accounts and do not support the petitioner's claim that he spent all of his savings on his former wife and her family. Rather than explaining how the [REDACTED] bank statements support the petitioner's claim on appeal, counsel merely repeats his prior brief submitted below stating that the translations have not yet been

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<sup>1</sup> In the instant appeal, counsel asserts that it would have been "burdensome and redundant for the petitioner to transfer the money from his personal account" to the joint account, although the record lacks any evidence to support this explanation. The unsupported assertions of counsel do not constitute evidence and cannot satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

received. Counsel fails to acknowledge that he submitted the translations over three and a half years ago in October 2007.

The record contains significant, unresolved discrepancies regarding how and when the petitioner met his former wife and his financial expenditures related to their marriage. These inconsistencies seriously detract from the credibility of the petitioner's claims. The remaining, relevant evidence is insufficient to meet the petitioner's burden of proof and he has failed to establish that he entered into marriage with his former wife in good-faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Battery or Extreme Cruelty*

As stated in our prior decision, the petitioner discussed three incidents of alleged abuse in detail in his statements. First, the petitioner stated that on one occasion after an argument, his former wife took all of the wires for the television, computer, telephone and facsimile machine, which prevented him from running his business. The petitioner reports that he contacted his friend, [REDACTED] who brought him new wires. When the petitioner's former wife returned and found out that [REDACTED] had helped the petitioner, she became angry, told the petitioner to make [REDACTED] leave and when the petitioner refused, she went out and scratched [REDACTED] car. The petitioner states that afterwards, his former wife acknowledged that she cannot control herself and admitted that she had twice attempted suicide in the past.

Second, the petitioner states that on another, unspecified occasion, he was arguing with his former mother-in-law when she tried to hit him. During the confrontation, the petitioner reported that his former wife broke his glasses and assaulted him. The petitioner only mentioned this incident in his first statement and offered no further, probative details of his former wife's alleged assault in either of his two latter statements.<sup>2</sup>

Third, the petitioner reported that one night his former wife locked him out and he had to sleep in the car. According to the petitioner, the next day he told her that he wanted to get a divorce, but she refused. The following evening, the petitioner stated that he called his parents who told him that his former wife had called them and falsely said that he drank and gambled. When the petitioner confronted his former wife upon her return, she did not respond, but just entered the house. The petitioner went out and closed the door because he needed their car, but when he got outside he realized that his former wife had driven her parent's car. When he went back to their home, his former wife had locked him out. The petitioner reported, "So I thought the best thing is I can let the air go out from tires [sic] so she can not move the car and her mom has to bring the car back." The petitioner stated that his former wife called the police and he was arrested.

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<sup>2</sup> In his affidavit, the petitioner stated that his former wife threw objects at him at least three times. The petitioner again mentioned the incident where his former wife broke his glasses, but he failed to describe that incident or any other incidents of her alleged violence in any probative detail. Moreover, as previously discussed, the petitioner's affidavit is of questionable credibility and he did not explain why he failed to mention any further incidents of his former wife's violence until his second filing with his first appeal.

In his second statement, the petitioner explained that his former wife visited him in jail, apologized and said that she wanted to “teach [him] a lesson to know that here is America and women have the power not men.” The petitioner stated that his former wife dropped the charges against him and wrote a letter to the district attorney, but “still the [district attorney] takes the charges in US law.” The petitioner stated that his former wife then called his parents and told them, “if you want your son go get him from a corner of jail.”

After the petitioner’s release from jail and immigration detention, the petitioner reported that he returned home and found that his former wife’s family had moved everything out of the house except for some of his personal belongings. The petitioner stated that his former wife’s family would not let his former wife return to him unless he agreed to pay their credit card debts. When the petitioner refused, he reported that his former wife’s family returned to his home and took all of his belongings and the former couple’s car. The petitioner stated that he called the police because he was frightened of his former wife’s parents who had previously threatened that they could pay someone to kill him if he did not go back to [REDACTED]. The petitioner stated that he moved to another apartment, but after his former mother-in-law came and “again started abusing [him] in some ways,” he went to [REDACTED] to stay with his aunt.

The petitioner further stated that his former wife called him derogatory names at least five days a week. The petitioner claimed that he was also economically abused and in his second statement, the petitioner reported that he lost more than [REDACTED] his life’s earnings, during his marriage.

*In our prior decision, we explained in detail how the letters from [REDACTED] and the petitioner’s family failed to fully support his claims. In the instant appeal, counsel asserts that the letters should not be required to provide detailed descriptions of the abuse, but should be considered as evidence of the petitioner’s “mental state” and “the breakdown of [his] sense of self-worth and personality.” While the letters certainly attest to how the petitioner’s former spouse’s behavior affected him, the letters are insufficient to demonstrate that the behavior of the petitioner’s former spouse amounted to extreme cruelty.*

In the instant appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erroneously required the petitioner to submit corroborative and documentary evidence of battery and extreme cruelty. We find no such error in any of the prior decisions issued in this case. Those decisions did not state that corroborative documentation was required, but rather addressed what evidence was submitted by the petitioner himself and other relevant evidence of record.

In the instant appeal, counsel asserts that the record contains “substantial evidence regarding the cycle of abuse,” but he fails to resolve the contradiction between the petitioner’s claims and the relevant police and court documents. The Summary of Facts from the [REDACTED] District Attorney Intake Management printout regarding the November 16, 2002 incident when the petitioner’s former wife called the police states, in pertinent part:

An investigation showed that the defendant and his wife (victim) had been having marital problems and have been arguing a lot. When the female returned home this evening, she found

that the door was bolted from the inside. The male eventually opened the door. When he did so, he pulled it back and then slammed it on the victim as she was walking thru [sic] it. The door hit her on her left forearm, causing pain, numbness and swelling. I observed a red, raised area on the forearm. . . . She told that the male is very violent towards her and has beat her at least three times in the past. He has also allegedly beat her mother. . . . She told me that due to cultural beliefs, she has not reported abuse in the past. He also allegedly told her, approximately three months ago, that if she contacted the police, he would cut off her head and place it on her chest. Because of the on going violence and threats, she has requested a MOEP [Magistrate's Order for Emergency Protection].

In connection with the petitioner's arrest and criminal proceedings, his former wife was granted an emergency order of protection on November 17, 2002, which was in effect for 60 days. In his affidavit, the petitioner stated that the court issued "mutual protective orders" to both the petitioner and his former wife to stay away from each other, but the petitioner submitted no documentation of a protective order issued against his former wife.

The record shows that the petitioner pled guilty to, and was convicted of, assault against his former wife on November 20, 2002, but that his conviction was later dismissed and on April 14, 2003, he pled guilty to and was convicted of a terroristic threat offense. In his statements, the petitioner asserted that he did not slam the door on his former wife's arm and opined that she injured herself. The petitioner reported that although he was not guilty, he pled guilty to the assault charge because his court-appointed attorney told him he would be released immediately and did not tell him that he would be placed in removal proceedings. The petitioner stated that after his release from immigration custody, he hired an attorney who told him he could change the assault case to a non-deportable offense. The petitioner explained, "So my case was dismissed . . . and I had no other choice but to except [sic] the terroristic attack case in order not to be deported." The petitioner did not further explain his choice to plead guilty to the terroristic threat offense despite his professed innocence.

The petitioner also denied ever threatening to cut off his former wife's head and place it on her chest, as reported in the District Attorney's office printout. However, in his first statement, the petitioner explained, "I do not know exactly what I said but . . . in our culture and language if you are angry from someone [sic] and if you tell him or her that I kill you or something it means nothing and it is not a threat at all[.]"

The petitioner's former wife, in her letter, conceded that the petitioner's threat "and many others, are among the everyday language of many [redacted] who not only say it to their spouses, but also to their children." However, the petitioner's former wife further stated:

On the night of his arrest . . . he became very angry and tried to leave the house in a hurry as I was entering, which is when the door hit me . . . . Being that I was very mad and angry at the time I did not think twice about my statements to the police for I wanted only to teach him a lesson about American law. Only later, when I calmed down, did I realize that he never meant to intentionally hurt me in any way.

Even if the petitioner's former wife's letter established that the petitioner only hurt her unintentionally, she indicated that she was injured as a result of his actions. In the instant appeal, counsel asserts that the letter cannot be deemed incredible evidence of the petitioner's good-faith marriage (as discussed in the preceding section), but recognized as credible evidence of the petitioner's assault. Regardless of whether the letter shows that the petitioner abused his former wife, her letter clearly fails to support his claim that she subjected him to battery or extreme cruelty during their marriage.

The December 29, 2002 police report also does not support the petitioner's claim. In his first statement, the petitioner claimed that after his former wife and her family took all of his personal belongings, he called the police because he wanted a witness and because he was frightened that his former wife and her family might hurt him due to their previous threats. The petitioner stated that he "explained everything" to the police officer. However, the police report simply states, "Assist Citizen – Wife came and got husband's things[.] [S] he is on lease and they still are married. He wants to know what he can do[.]" The report also notes, "Common Property." While it confirms that the petitioner's former wife took belongings from their apartment after their separation, the police report indicates that the missing objects were common property and does not mention any threats made to the petitioner by his former wife's family.

The documentation of the former couple's divorce also contradicts the petitioner's claim. The petitioner's former wife filed the divorce action and the divorce decree states that the former couple's marriage was "dissolved on the grounds of insupportability and cruel treatment." In his first statement, the petitioner claimed that his former wife went to court when he was in █████ told the court that he had left the country and so "the court gave everything to her favor." The original divorce petition of the petitioner's former wife cites insupportability as the only ground for divorce, which indicates that the ground of cruel treatment was added at a later time. Yet the final divorce decree states that the petitioner "previously made a general appearance in this action, and although properly noticed of the trial date, did not appear and wholly made default." In his affidavit, the petitioner stated that he did not receive notice of the final hearing, but the petitioner submitted no credible explanation as to why the divorce decree states that he was properly notified of the final hearing date. In response to the NOID, the petitioner submitted a translation of his passport which shows that he was in █████ on the final hearing date of his divorce. Neither the petitioner nor counsel explain, however, why the petitioner chose to travel to █████ in July 2003, seven months after his former wife filed for divorce and while the proceedings were pending.

In sum, the record shows that the petitioner was convicted of making a terroristic threat against his former wife, that his former wife was granted an emergency order of protection against him and that she was granted a divorce due, in part, to his cruel treatment. The petitioner's testimony and the letters of his friend and family fail to rebut the documentary evidence against the petitioner. Accordingly, the petitioner has not established that his former wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Qualifying Relationship*

Beyond the director's decision, the petitioner has also failed to demonstrate a qualifying relationship with his former wife.<sup>3</sup> The record shows that the petitioner and his former wife were divorced in September 2003 before this petition was filed on October 2, 2003. As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

### *Good Moral Character*

The petitioner submitted a Certificate of Disposition and certified copies of court records which show that on November 20, 2002, the [REDACTED] Criminal Court convicted the petitioner of assault, a class C misdemeanor [REDACTED]. On April 14, 2003, the court dismissed the petitioner's assault conviction and the case was refiled. That same date, the court convicted the petitioner of a terroristic threat in violation of section 22.07 of the [REDACTED] Penal Code, a class B misdemeanor [REDACTED]. The record does not show that the petitioner's conviction poses a per se bar to a finding of his good moral character under section 101(f) of the Act.<sup>4</sup>

Nonetheless, as explained in our prior decision, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) prescribes that a "self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character." In the instant appeal, counsel reiterates his claims that the petitioner established extenuating circumstances because he "categorically denies ever having assaulted or threatened his wife" and because the petitioner's statements show that his former wife "filed false charges against him as a vindictive act."

The record does not support counsel's claims. The evidence indicates that the petitioner's terroristic threat conviction arose from the November 16, 2002 incident. Although the petitioner denied assaulting or threatening his former wife as reported in the District Attorney's office summary, he acknowledged that his conviction arose from their dispute and his ensuing arrest. In her letter, the petitioner's wife stated that she was injured as a result of the petitioner's actions during the incident and the reporting officer observed an injury on the petitioner's former wife's arm. While the petitioner stated that he "had no other choice" but to plead guilty to the terroristic threat charge in

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<sup>3</sup> 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 (9th Cir. 2003).

<sup>4</sup> In our prior decision, we determined that the record was insufficient to determine whether or not the petitioner's offense categorically involved moral turpitude, (thus posing a per se bar to a finding of his good moral character under section 101(f)(3) of the Act), because the relevant documents did not state the specific subsection of the Texas statute under which the petitioner was convicted. Even if the petitioner's crime involved moral turpitude, however, the record indicates that it would fall within the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act because the maximum penalty for a class B misdemeanor in Texas does not exceed imprisonment for one year.

order to avoid deportation, he did not further explain why, if he was indeed innocent of the charge, he failed to so plead. Accordingly, the record does not establish extenuating circumstances, but rather indicates that the petitioner was convicted of a terroristic threat offense arising from a violent dispute with his former wife and his ensuing arrest, an unlawful act that adversely reflects upon his moral character.

The remaining, relevant evidence fails to overcome the significance of the petitioner's conviction. In his affidavit, the petitioner attested that he had "been a very good person" during his stay in the United States because he timely paid his taxes, had a good credit score and had his own business. However, the petitioner failed to substantively address the significance of his conviction. Rather than expressing remorse for his behavior towards his former wife, the petitioner repeatedly denied that he ever hurt her.

As noted in our prior decision, the petitioner's [REDACTED] criminal background clearance and the supporting affidavits from two relatives and one friend are of little probative value because they only attest to the petitioner's behavior in [REDACTED] not during his residence and conviction in [REDACTED].

The record shows that the petitioner was convicted of a terroristic threat offense arising from a dispute with his former wife and his ensuing arrest, during which the reporting officer observed a visible injury on the petitioner's former wife's arm. The petitioner was convicted of an unlawful act that adversely reflects upon his moral character and he has failed to establish extenuating circumstances or show that his behavior was consistent with the standards of the average citizen in his community. See section 101(f) of the Act, 8 U.S.C. § 1101(f); 8 C.F.R. § 204.2(c)(1)(vii). Accordingly, the petitioner has not demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

### *Conclusion*

On appeal, the petitioner has failed to overcome the director's determination that he did not establish that he entered into marriage with his former wife in good faith, that his former wife subjected him to battery or extreme cruelty during their marriage and that he is a person of good moral character. Beyond the director's decision, the petitioner has also not demonstrated that he had a qualifying relationship with his former wife. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the four reasons stated above, with each considered an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.