

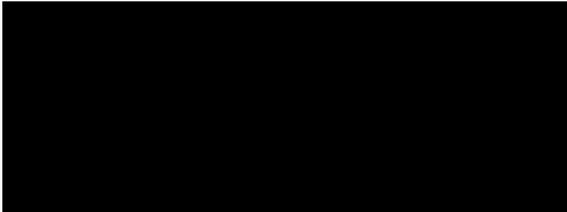
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



B9

DATE: **APR 18 2011** Office: VERMONT SERVICE CENTER FILE:  EAC 10 152 50762

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 \$630. 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

The petitioner seeks immigrant classification under 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 determined that the petitioner had not established that: he had a qualifying relationship with a United States citizen; he is eligible for immediate relative classification based on the qualifying relationship; he had jointly resided with a United States citizen; he had been subjected to battery or extreme cruelty perpetrated by a United States citizen, or he had entered into the marriage in good faith. On appeal, counsel submits a Form I-290B, Notice of Appeal or Motion and a statement in support of the appeal.

#### *Applicable 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 based on his or her relationship to the abusive spouse, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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

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

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

(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 set forth 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 . . . .

\* \* \*

(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.

#### *Facts and Procedural History*

The petitioner is a native and citizen of Israel. He entered the United States on September 7, 2006 on a B-2 visa. He married A-G-,<sup>1</sup> the claimed abusive United States citizen on May 18, 2007. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner on November 18, 2007. The Form I-130 was denied on November 4, 2008. On May 7, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On May 21, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that a qualifying relationship with the claimed abusive United States citizen spouse existed when the petition was filed and consequently the petitioner had not established eligibility for immigration classification based on a qualifying relationship. The director also determined that the petitioner had not established that he jointly resided with A-G-, that he had been subjected to battery or extreme cruelty perpetrated by A-G-, or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides a statement on the Form I-290B. Counsel also resubmits previously provided documentation.

#### *Qualifying Relationship*

The petitioner has failed to establish that he had a qualifying relationship with a United States citizen when the petition was filed on May 7, 2010. The language of the statute clearly provides that to remain eligible for classification despite no longer being married to a United States citizen, an alien must have been the bona fide spouse of a United States citizen "within the past two years" and demonstrate a connection between the abuse and the legal termination of the marriage.

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

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). In this matter, the petitioner acknowledged in response to the director's RFE that he was no longer married to A-G-. The record includes a Divorce Complaint initiated by the petitioner which was filed on December 11, 2008. In response to the director's RFE asking specifically for a copy of the marriage termination document, counsel for the petitioner returned the RFE on which appears a handwritten note stating: "I do not have." As the petitioner has failed to provide evidence of the final divorce judgment and has not provided a reason why he is unable to provide the document, he has not met his burden of proof in establishing that he had a qualifying relationship with a United States citizen when the petition was filed. In addition, as will be discussed below, he has not established that he was subjected to battery or extreme cruelty by the United States citizen, so has also failed to establish that the legal termination of the marriage was connected to the claimed abuse. The petitioner has not submitted sufficient evidence to establish that he had a qualifying relationship with a United States citizen.

### *Immigrant Classification*

As the petitioner has not established that he has a qualifying relationship with a United States citizen, he is also precluded from establishing that he is eligible for immediate relative classification based on his relationship with A-G-, 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. In this matter his relationship to the claimed abusive spouse has not been established.

### *Residence*

The petitioner in this matter does not indicate on the Form I-360 when he jointly resided with A-G-. He also fails to provide probative information in his personal statement dated August 16, 2010 regarding when the couple resided together, the length of time the couple resided together, and descriptive detail of where the couple resided together. The record included a lease with a beginning term of June 1, 2007 through May 2008 signed only by the petitioner. The record also included several utility bills addressed to A-G- at the residence listed on the lease. The record further included bank statements addressed to the couple at the residence listed on the lease.

The petitioner did not submit any further testimony or evidence on this issue on appeal and counsel did not address this issue on appeal.

Upon review of the record, we find no error in the director's assessment of the relevant evidence. The petitioner's own testimony does not reveal any specific information regarding his claimed joint residence with A-G- and the record does not otherwise include testimony or evidence that establishes that the petitioner jointly resided with A-G-. Utility bills and bank statements addressed to a particular location do not establish that the petitioner or his former spouse resided at the address. Upon review of the totality of the record, the petitioner has not provided probative testimony or evidence that supports his claim that he jointly resided with A-G- during their marriage.

*Battery or Extreme Cruelty*

The petitioner initially did not provide a statement regarding his claim that he was subjected to battery or extreme cruelty perpetrated by A-G-. The initial record included an April 15, 2010 statement prepared by [REDACTED] of the Temple Beth Ami who stated that during the past few months he had become acquainted with the petitioner and during that time he noticed severe bruises on numerous areas of the petitioner's body. [REDACTED] also noted that he had "listened to [the petitioner's] story of alleged abuse from his spouse" and believed that the petitioner was being truthful. In an April 20, 2010 statement, [REDACTED] declared that he had witnessed a big argument between the petitioner and A-G- on December 28, 2008 at their home on the petitioner's birthday. In an April 15, 2010 statement, [REDACTED] declared that in 2008 he and his wife and the petitioner and A-G-, met at a restaurant for dinner and during dinner, A-G- was disrespectful and she took a phone call and left the restaurant without notice. In an April 16, 2010 statement signed with an illegible signature, the declarant indicated that (s)he attended dinner at the petitioner's home and A-G- made rude comments, argued, and A-G- kicked them out of the house in the middle of the meal.

In response to the director's RFE, the petitioner provided an August 16, 2010 statement. The petitioner stated that everything was fine between him and A-G- until they went to the immigration interview<sup>2</sup> and after that A-G- felt bad about the interview and started acting differently towards him. The petitioner indicated that she would not talk and did not want him to touch her and although he suggested they obtain counseling with his [REDACTED] she did not want to go. The petitioner stated that one day he came home and all her things were gone and while he was standing there, a man grabbed him and threw him on the floor and the man kept saying A-G-'s name. The petitioner indicated that the man hit him and told him he was the father of one of A-G-'s children and that the petitioner should forget about her forever. The petitioner indicated that he looked for A-G- and tried to call her but could not locate her. The petitioner noted that when he returned home that night, the same man was in the house and he yelled at the petitioner, physically assaulted him, and told him he needed to divorce A-G-. The petitioner stated that he did not know what to do and talked to his [REDACTED] and friends but did not go to the police. The petitioner reported that two days later, the same man came toward him and told him he was not going to hurt him but asked him to listen to the phone and he heard A-G- say to just do what the man said and the phone went dead. The petitioner indicated that he called A-G-'s mother and told her that he was doing what the man said and he reported that he had not seen A-G- since the day she left the house.

In an August 16, 2010 letter signed by [REDACTED] declared that he had known the petitioner for some time and had seen the petitioner's faith tested the last two years by the failure of his marriage and his fear that he would go to jail and be deported. [REDACTED] indicated that he first noticed the petitioner's problems with bruises on his neck when he came to the synagogue in January 2009. [REDACTED] also noted that in February 2009, the petitioner

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<sup>2</sup> The record shows that the couple attended two interviews in connection with the Form I-130 that A-G- filed on behalf of the petitioner: February 22, 2008 and April 22, 2008.

came to the synagogue with a bruise on his head. [REDACTED] indicated further that around Thanksgiving 2009, the petitioner finally confided in him regarding what had happened with his wife's new boyfriend.

The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his former wife. The director specifically noted that the petitioner was a victim of physical assault by a third party, and determined that the evidence in the record did not show that the petitioner's former spouse incited, participated in, or condoned the alleged abuse inflicted upon the petitioner by the third party.

On appeal, counsel for the petitioner asserts that the petitioner's former spouse's acts are part of a pattern of abuse and that the constant harassment and physical beatings with the consent of the United States citizen qualifies as abuse contemplated by Congress under the Act. Counsel contends that the director failed to give sufficient weight to the petitioner's Rabbi's statements.

Upon review of the record, the testimony provided presents significant inconsistencies. The petitioner's timeline of the alleged events does not correspond with the date he filed the divorce complaint. The record on appeal includes a divorce complaint filed by the petitioner on December 11, 2008. The petitioner's [REDACTED] in his April 15, 2010 letter indicates that he had become acquainted with the petitioner in the past few months and during that time had noticed bruises on the petitioner's body. Thus, the petitioner's [REDACTED] apparently puts the timing of the bruises sometime in late 2009 almost a year after the divorce complaint was filed. In the [REDACTED] statement in response to the RFE, he amends his statement to reflect that he noticed bruises on the petitioner's neck in January 2009 and a bump on his head in February 2009. Thus, the injuries from the alleged abuse by A-G-'s new boyfriend (according to [REDACTED]) or the father of one of A-G-'s children (according to the petitioner) did not show up until sometime after the divorce complaint was filed on December 18, 2008. As the reason for the alleged beatings was to forcibly encourage the petitioner to divorce A-G-, and the petitioner had already filed a divorce action, the petitioner's story lacks credibility. In addition, in [REDACTED] August 16, 2010 statement in response to the RFE, he declared that he had known the petitioner for some time and intimated that he was aware that the petitioner had marital difficulties for the past two years. This appears inconsistent with [REDACTED] initial April 15, 2010 statement wherein he declared that he had known the petitioner only the past few months.

In addition to the inconsistencies noted above, the other individuals who provided testimony on behalf of the petitioner also undermine the credibility of the petitioner's story. According to [REDACTED] the petitioner and his ex-wife had a big argument on December 28, 2008 at their home. The petitioner, although not providing a date for the time A-G- left him and he never saw her again, filed the divorce complaint on December 11, 2008. Again, the discrepant information in the record regarding the petitioner's interaction with A-G- undermines the petitioner's account. In addition, the statements submitted by [REDACTED] and an unidentified declarant, as well as [REDACTED] all include references to incidents not mentioned in the petitioner's statement. The petitioner does not discuss any arguments, rude statements, or disrespectful behavior by A-G- in his statement, but rather limits his claim of abuse to that perpetrated by a third party.

The lack of consistent, credible testimony describing specific episodes of battery or extreme cruelty perpetrated by A-G- diminishes the probative value of the petitioner's testimony and the testimony submitted on his behalf. Moreover, as the director determined, the petitioner does not provide a detailed and explicit account that establishes that the behavior of a third party involved with his former wife was behavior solicited or condoned by his former wife. Counsel's speculation that the constant harassment and physical beatings occurred with the consent of the petitioner's United States citizen spouse is without merit. First, the petitioner does not speak of constant harassment but of physical altercations over a several day period at most. Second, the record does not include sufficient evidence that the petitioner's former spouse solicited or condoned the behavior. The record is simply insufficient in this regard.

Upon review of the totality of the evidence in the record, the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by A-G-. The record does not provide consistent, probative evidence that demonstrates that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that A-G-'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 petitioner's statements and the statements of others lack the consistent detail necessary to establish that A-G-'s actions constitute extreme cruelty as defined in the statute and regulation or that he was subjected to battery perpetrated or solicited by A-G-. The petitioner has failed to establish that A-G-'s actions were comparable to the types of 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. Nor has the petitioner established that A-G-'s behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). In this matter, the record presented lacks sufficient credible information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse.

### *Good Faith Entry Into Marriage*

The petitioner does not indicate how he met A-G-, he does not describe their interactions prior to marriage, and he provides only a cursory description of his subsequent interaction with A-G-. He fails to provide probative information regarding his specific intent when entering into the marriage. The record lacks information regarding the couple's joint life for the time that the couple was married and allegedly residing together. The petitioner does not provide the requisite information regarding his interactions with A-G- subsequent to the marriage, except as it relates to the claimed abuse.

The record includes photographs of the couple on unidentified occasions, bank statements along with cancelled checks signed only by the petitioner, a lease signed only by the petitioner, and utility bills addressed to the petitioner's former spouse. These documents are insufficient to

establish the petitioner's intent when entering into the marriage. The statements of others submitted on the petitioner's behalf do not provide probative details regarding the declarants' personal observations of the petitioner's interactions with A-G-. The declarants do not provide testimony that assists in establishing the petitioner's intent when entering into marriage.

Upon review, the petitioner's statement fails to provide substantive information regarding his courtship with and marriage to A-G-. The petitioner does not describe the couple's mutual interests, he does not describe their daily routines in detail, and he does not provide any probative information for the record that assists in determining his intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter the petitioner has not set forth his intent in probative detail and the record does not include probative evidence that the couple established a life together. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with A-G- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

*Conclusion*

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. The petition remains denied.