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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



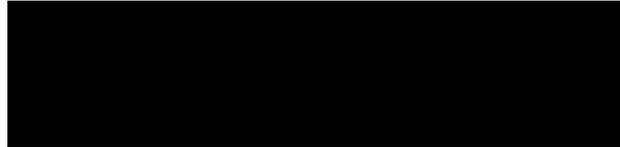
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DATE: **AUG 18 2011** Office: [REDACTED] FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

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

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$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, [REDACTED] 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 will remain 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 been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse. On appeal, counsel submits a brief.

#### *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.

\* \* \*

(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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

#### *Facts and Procedural History*

The petitioner is a native of [REDACTED] and a citizen of [REDACTED]. He entered the United States on July 15, 2004 as a B-2 nonimmigrant visitor and subsequently changed his status to an F-1, nonimmigrant student. He married C-S-<sup>1</sup>, the claimed abusive United States citizen on June 6, 2008. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on March 24, 2009. On March 5, 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 he had been subjected to battery or extreme cruelty perpetrated by C-S-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

#### *Battery and/or Extreme Cruelty*

In a February 16, 2009 personal statement, the petitioner declared that by the end of summer of 2008, C-S- became demanding and started to yell and scream at him. He stated that his wife did not allow him to talk to friends and would get drunk and become aggressive or depressed. The petitioner describes an argument that occurred on September 17, 2008 over C-S-'s lack of desire to pursue an education or a job that included C-S- calling him names and throwing his favorite food on the floor. The petitioner indicated that on the advice of his uncle he reported this argument to the police. The record contains a police report dated September 18, 2008 wherein the petitioner reported that he had a verbal dispute with his wife. The petitioner also described an argument that occurred on November 11, 2008 over money, wherein C-S- yelled and screamed, called him names, cursed his parents, compared him to her former boyfriend, and threatened she would get him suspended from school, arrested, and deported. The petitioner stated that he left and went straight to the police and then to a hotel. The record includes a police

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

report dated November 11, 2008 wherein the petitioner declared that C-S- screamed at him and disrespected him and although he did not want her to get arrested he was getting a divorce.

In response to the director's RFE, the petitioner provided a second personal statement dated May 28, 2010, in which he declared that C-S- planned her acts in advance to destroy his peace of mind. He indicated that C-S- insulted his ethnicity, treated him like a servant, and humiliated him as a man. The petitioner also provided the statements of his uncle and two friends. The petitioner's uncle declared that the petitioner told him of the argument in September 2008 and he suggested that the petitioner go to the police. The petitioner's uncle also indicated that the petitioner told him that C-S- called him derogatory names, threatened to call the police on him, and did not respect him. [REDACTED] indicated that the petitioner told them of C-S-'s verbal insults and bad treatment and they noticed that the petitioner was becoming more detached and unsociable.

Upon review of the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty.

On appeal, counsel for the petitioner asserts that C-S- disconnected the house phone and the petitioner's cell phone which demonstrate that C-S-attempted to control the petitioner. Counsel claims that the petitioner lost contact with his friends, he was subjected to the harmful effects of his wife's alcoholism, and C-S- called him derogatory names and insulted his nationality and religion.

Upon review of the record, the petitioner has not described any particular incident that constitutes battery; rather, his claim is based on being subjected to extreme cruelty. A review of the petitioner's statements does not reveal any particular act by C-S- that demonstrates extreme cruelty as that term is defined in the statute and regulation. Although the petitioner described arguing and derogatory name calling, he does not include probative testimony that he was subjected to verbal or mental abuse or that C-S-'s non-physical conduct was accompanied by any coercive actions or actual threats of harm, or that her actions were aimed at insuring dominance or control over him. The record is deficient in this regard. The petitioner has failed to establish that C-S-'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 provided testimony sufficient to establish that C-S-'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)).

Contrary to counsel's assertion, the petitioner's statements do not reveal that C-S- attempted to control him. Similarly, the statements of the petitioner's uncle and friends reflect information the petitioner conveyed to them. They do not indicate that they had first-hand knowledge of any specific acts of battery or verbal abuse. Moreover, the affiants' testimony does not reveal any

particular conduct that includes acts of battery or extreme cruelty that are comparable to the acts set out in the statute and regulation. The police reports provided, likewise, do not describe conduct perpetrated by C-S- that includes violence or the threat of violence or any behavior that demonstrates that the petitioner was subjected to the control or dominance of C-S-.

In this matter, the petitioner's testimony and the testimony of others on his behalf fail to establish that he was subjected to battery or extreme cruelty perpetrated by C-S-.

### *Residence*

Beyond the decision of the director, the petitioner has not established a joint residence with the claimed abusive spouse. On the Form I-360 he states that he jointly resided with C-S- from June 2008 until November 2008. The petitioner does not provide probative testimony regarding the claimed joint residence with C-S-. He does not describe the joint residence, their jointly-owned belongings or household furnishings, or their daily routines within the residence. Although the petitioner's uncle testified that he and his family had visited the petitioner and C-S- at their residence, celebrated holidays together, and cooked dinner together, he does not provide the requisite detail establishing that the couple jointly resided at the apartment. [REDACTED] and [REDACTED] do not describe visiting the petitioner and C-S- at the claimed joint residence. The petitioner provided bank statements for the period between May 29, 2008 and September 26, 2008 addressed to the petitioner and C-S- at the claimed joint residence; however, receiving mail at a particular location is insufficient to establish that the couple resided at that location.

The AAO has reviewed the record, including the petitioner's statements, the statements of others on his behalf, as well as the documentation in the record, and finds that the petitioner has not submitted probative testimony or other evidence to establish that he and C-S- resided together during their marriage.

### *Good Faith Entry Into Marriage*

Also beyond the decision of the director, the petitioner has not established that he entered into the marriage in good faith. The petitioner described his initial meeting with C-S- in May 2008, her moving into his apartment, and their marriage on June 6, 2006. The petitioner's uncle, in his affidavit, indicates that he met C-S-, attended the couple's wedding and a small party at a restaurant, and visited the couple at their apartment. [REDACTED] stated that he met C-S- in May 2008, attended the wedding and a small party, and that the couple attended sporting events and firework displays with him and other friends. [REDACTED] also stated that he met C-S- in May 2008, attended a small party after the couple's wedding, and went to parties, the movies, and summer events in 2008 with the couple.

Upon review of the petitioner's statements, he does not provide probative testimony regarding his courtship with C-S- or his interactions with C-S-. He does not describe the couple's mutual interests in detail, he does not detail the couple's daily routines, and he fails to 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). Likewise, the affiants who submit statements on the petitioner's behalf provide general information regarding attending events with the couple but fail to include descriptive detail regarding particular and specific incidents where they witnessed the alleged bona fides of the couple's marital relationship. The bank statements submitted without the underlying transactional information are insufficient to establish that the couple used the joint account for the necessities of a life together and similarly, do not assist in establishing the petitioner's intent in entering into the marriage. Upon review, the record in this matter does not include sufficient probative evidence establishing the petitioner's intent when entering into marriage with C-S-. Accordingly, the petitioner has not established that he entered in marriage in good faith, as required by section 204(a)(1)(A)(iii)(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.