

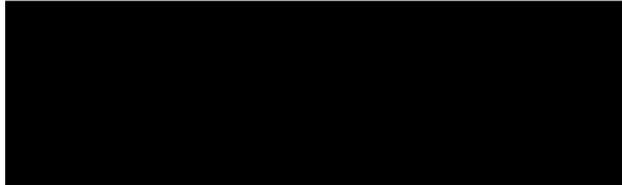
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9.

FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 02 2011

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, initially approved the immigrant visa petition but subsequently revoked that approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 revoked the approval of the petition because the petitioner did not establish that he resided with his U.S. citizen spouse, that his wife subjected him to battery or extreme cruelty during their marriage, and that he entered into the marriage in good faith.

On appeal, counsel submits a brief, and asserts, in part, that the evidence previously submitted documented that the petitioner resided with his U.S. citizen spouse, that his spouse subjected him to battery or extreme cruelty during their marriage, and that he entered into the marriage in good faith.

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, 8 U.S.C. § 1154(a)(1)(J) 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:

(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 filed 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.

* * *

(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 case provides the following pertinent facts and procedural history. The petitioner is a national of Argentina, who entered the United States as a WT nonimmigrant visitor on September 16, 2001. On April 19, 2003, the petitioner married N-R-¹. On November 24, 2003, N-R- filed a Form I-130, Petition for Alien Relative, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On April 27, 2005, the petitioner and N-R- divorced. On April 3, 2006, the Acting District Director terminated all action on the Forms I-130 and I-485, due to the divorce of the petitioner and N-R-. On September 15, 2005, the petitioner married C-S-², a U.S. citizen, who is the claimed abuser in the instant case.

The petitioner filed the instant Form I-360 on September 22, 2006. On October 25, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residence and good faith marriage. The director also requested evidence of C-S-'s citizenship/immigration status, as the petitioner reported in the psychosocial report that C-S- was originally from Cuba. The petitioner, through former counsel, responded with additional evidence. On February 4, 2008, the director approved the instant I-360. On April 16, 2010, the director issued a Notice of Intent to Revoke (NOIR) the petition for lack of, *inter alia*, the requisite joint residence, abuse, and good faith entry into the marriage. The director also requested information regarding the petitioner's current marital status. The petitioner, through current counsel, timely responded to the NOIR with additional evidence. On April 16, 2010, the director revoked the petition on the three aforementioned grounds. Counsel timely appealed.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that he resided with his wife:

- The petitioner's affidavit dated July 18, 2006, submitted at the time of filing;
- An affidavit from [REDACTED] dated December 21, 2007;
- An affidavit from [REDACTED] dated December 21, 2007;
- A partial copy of a phone bill listing the names of the petitioner and C-S-, but no address, for the period from October 10 – November 9, 2005;
- A bank statement addressed to the petitioner and C-S- at [REDACTED] for the period from January 27 – February 23, 2006;
- A check copy listing the petitioner and C-S-'s names and the "[REDACTED]" address; and

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

- The petitioner's Form G-325A, Biographic Information, signed by him on July 18, 2006, on which he omitted the dates that he lived at his three claimed addresses for the last five years.

The AAO affirms the director's determination that the petitioner did not establish that he resided with C-S-.

On the Form I-360, the petitioner stated that he lived with C-S- from the date of their marriage on September 15, 2005 until December 2005. For the "last address at which you lived together . . ." and "the last date you lived together with that person at that address," the petitioner stated: [REDACTED]

The record contains only the July 18, 2006 affidavit from the petitioner, which was submitted at the time of the petition's filing and again in response to the director's RFE. In his July 18, 2006 affidavit, the petitioner states that after his marriage to C-S-, they lived together at the "[REDACTED] address." The petitioner also states that C-S- "disappeared in December."

In his December 21, 2007 affidavit, [REDACTED] states, in part, "During their courtship, they had moved in together and I used to often visit them at their apartment at [the [REDACTED] address]." [REDACTED] also states that he bought furniture for their apartment "right before [their] wedding."

In his December 21, 2007 affidavit, [REDACTED] states, in part, that during the time the petitioner and C-S- were dating, "we all used to just rent some movies and watch them together in their apartment at [the Euclid address]." [REDACTED] also describes Thanksgiving dinner at the petitioner and C-S-'s apartment at the "[REDACTED] address."

Counsel asserts on appeal that the petitioner and C-S- "did live together, although brief, and did have some form of consummation of their marriage." As stated by the director in his NOIR, the record contains inconsistencies and/or deficiencies. The claims by [REDACTED] and [REDACTED] that the petitioner and C-S- resided together at the "[REDACTED] address" during their courtship conflict with the petitioner's claim that he and C-S- began their joint residence at the "[REDACTED] address" after their marriage. In addition, the joint bank account statement is dated after the date the petitioner claims that C-S- abandoned their residence. The AAO acknowledges the assertion by counsel in his May 18, 2010 letter, submitted in response to the director's NOIR, that the telephone bill, dated October 10, 2005, is evidence that the petitioner and C-S- purchased residential phone service for the home phone line. However, this partial bill alone does not establish that the petitioner resided with C-S-. Moreover, it does not include an address for the petitioner and C-S-.

In sum, the relevant evidence contains unresolved inconsistencies and/or discrepancies regarding the petitioner's alleged residence with C-S-. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In addition to the documentation listed above, the record contains the following evidence relevant to the petitioner's claim that C-S- subjected him to battery or extreme cruelty during their marriage:

- An affidavit from [REDACTED] dated July 18, 2006;
- An affidavit from [REDACTED] dated July 18, 2006; and
- A psychosocial report from [REDACTED] based on one interview with the petitioner on June 5, 2006.

The AAO affirms the director's determination that the petitioner did not establish the requisite battery or extreme cruelty.

On appeal, counsel asserts that the petitioner's testimony, the testimony submitted on his behalf, and the psychological report, demonstrate that the petitioner suffered abuse by his U.S. citizen spouse.

In his July 18, 2006 affidavit, the petitioner states, in part, that: his relationship with C-S- deteriorated soon after they were married and became abusive and depressing; C-S- disappeared "for days and nights" and did not come home at least once or twice a week; C-S- left her baby daughter with him to babysit while she stayed out all night; C-S- became upset, humiliated him, and made him feel ashamed when he asked and expressed concern about her absence; and C-S- told him that "she could take control of [his] life and . . . her child at any time." The petitioner explains that he felt isolated and disrespected due to her absence. The petitioner also states that: C-S- "was only interested in putting [him] down at home and in front of [his] friends"; she did not care about his self-image in front of their friends; she told their friends that she was the boss and he had to ask for her permission to go out with his friends; she threatened to tell the police that he was illegal if he did not ask for her permission to go out with his friends; she threatened to report him to "Immigration" if he was not at home when she returned, which made him afraid of losing his job and C-S-'s daughter; she yelled and screamed at him and made his home feel like a prison; she pushed him away and controlled their sexual relationship; she "stopped all physical relations"; and a few times, during arguments, she hit him and threw things at him. The petitioner explains that he did not call the police because he "did not want to make a big deal of it" and he did not want her daughter "to go through this." The petitioner also states that: C-S- "would continuously demand money" for her child and threaten him with deportation when he refused; she made him clean the house, do laundry, and clean up after her and her friends; she "used excessive and embarrassing verbal abuse" and insulted him and called him names in front of his friends; and she laughed and left with her friends whenever he tried to reason with her. The petitioner describes an incident at a restaurant with C-S- and Mr. [REDACTED] where "in front of [REDACTED] and everyone at the restaurant" C-S- screamed at him, slapped him, and threatened to report him to the "Immigration Service." The petitioner states that prior to disappearing in December, C-S- screamed at him, slapped him in the face, and hit him with her fists all over his body, after he told her how unhappy he was and he did not see any reason to stay married. The petitioner explains that he "did not approach the police because [he] wanted to maintain peace" and that he confided in his friends, [REDACTED] and [REDACTED] who "were present all this time with me." The petitioner states that: after he gave her money for the last time, C-S-

disappeared again and changed her cell phone number, and, when he tried to reach her through their friends, she called him and threatened to have him arrested if he did not leave her alone; and he felt shattered, isolated, and abandoned when he was unable to further contact her. The petitioner explains that he is "trying [his] best to recover from the emotional and psychological damage she has caused [him]."

In his July 18, 2006 and December 21, 2007 affidavits, [REDACTED] states, in part, that: soon after the petitioner and C-S- were married, C-S- "seemed distant and very irritable" and "was always upset and continuously yelled at [the petitioner]"; the petitioner confided in him about their married life on several occasions; the petitioner became confused, nervous, and depressed; C-S- would disappear and leave the petitioner with her baby; the petitioner "seemed sad all the time and sometimes despondent"; the petitioner told him that C-S- "was threatening him all the time with deportation" and he was afraid; C-S- was "incredibly cruel and disrespectful to [the petitioner]"; the petitioner would not get out of bed for his calls and started missing business appointments; he and the petitioner "would be walking to his apartment and [the petitioner] would see a Police car and would get nervous and run and hide"; and he was afraid when the phone rang, was afraid to check his mail box, and would not leave the house because he was afraid of being arrested and deported. [REDACTED] describes an incident when "[they] were having lunch and she told him that she needed extra money," whereupon "[a]ll of a sudden, [C-S-] got up from her seat and screamed at him: 'Forget it then, just watch your back because the police will be looking for you and you will be sent back to Argentina'." [REDACTED] also states that the petitioner's work suffered. [REDACTED] explains that, although he suggested that the petitioner continue with professional treatment, the petitioner "is a very private person" and "wants to deal with the problem in his own way and does not want to seek professional help."

In his July 18, 2006 and December 21, 2007 affidavits, [REDACTED] states, in part, that: soon after the petitioner's marriage to C-S-, the petitioner was "constantly unhappy, at times depressed and not himself"; the petitioner "would be quiet and would appear preoccupied"; C-S- constantly complained whenever she and the petitioner were together and she "blame[d] [the petitioner] for whatever she was upset about." [REDACTED] states that the petitioner told him that C-S- had stopped caring for him and that she disappeared for days without any explanation, and that he did not know what to do. Mr. [REDACTED] describes the restaurant incident described by the petitioner in his July 18, 2006 affidavit. [REDACTED] also describes an incident that occurred during Thanksgiving dinner at the petitioner and C-S-'s house, whereupon C-S- yelled at, insulted, and threatened the petitioner.

In his psychosocial report, [REDACTED] states, in part, that he based his report on one interview with the petitioner on June 5, 2006. [REDACTED] discusses C-S-'s background, namely that she was born in Cuba and is a lawful permanent resident of the United States.³ [REDACTED] also reiterates some of the petitioner's testimony of the alleged abuse and discusses events that the petitioner himself does not mention or are inconsistent with the petitioner's initial testimony. For example, [REDACTED]

³ Although the petitioner stated in his July 2006 statement that C-S-'s family is in Cuba, he claimed that she was a U.S. citizen born in the United States on the Form I-360 and indicated her country of birth as Argentina.

reports that: the petitioner “suffered terrible physical abuse throughout most of their relationship” and C-S- “would slap and punch him both in the privacy of their home and in front of friends” and “this occurred numerous times in their relationship”; the petitioner “was constantly hypervigilant and on his guard” due to C-S-’s aggressive and menacing fashion; the petitioner “never truly relaxed in his own home until he found safety and refuge after she abandoned the marriage”; “on a few of the occasions [of C-S-’s disappearances] his fears were assuaged by [C-S-’s] cousin who would at least inform [the petitioner] that [C-S-] was alive and well”; the petitioner “was often afraid that [C-S-] might become enraged and hurt him” and “he understood that her behavior could escalate to the point where he could become seriously injured”; C-S- monitored the petitioner’s phone calls; C-S- prevented him from speaking about her dangerous behavior with friends; the petitioner felt that he had no one to turn to; the petitioner “had to change the pin number on their joint account because he feared that she would completely deplete their savings”; the petitioner “once contacted her at the hospital where she claimed to work in cleaning and he was shocked to discover that she had been terminated from her position several months earlier”; and the petitioner did not contact the police “because he believed that doing so would either jeopardize his immigration status or cause him to be detained.” [REDACTED] concludes that the petitioner “now suffers from posttraumatic stress disorder [PTSD] and depression as a result [of the abuse]”, and that he “is fragile and overwhelmed with fear, anxiety, and shame.”

In this case, we do not find the petitioner’s evidence sufficient to meet his burden of proof. As discussed above, the affidavits from the petitioner and on his behalf contain inconsistencies and/or deficiencies. For example, [REDACTED] describes numerous incidents that were not mentioned in the petitioner’s testimony: that the petitioner would not get out of bed for his calls and started missing business appointments; that he and the petitioner “would be walking to his apartment and [the petitioner] would see a Police car and would get nervous and run and hide”; that the petitioner was afraid when the phone rang, was afraid to check his mail box, and would not leave the house because he was afraid of being arrested and deported; that “[they] were having lunch and she told him that she needed extra money,” whereupon “[a]ll of a sudden, [C-S-] got up from her seat and screamed at him: ‘Forget it then, just watch your back because the police will be looking for you and you will be sent back to Argentina’”; and that the petitioner’s work suffered. [REDACTED] also mentions an incident that occurred on Thanksgiving that is not mentioned in the petitioner’s testimony. The record contains no explanation for these inconsistencies and/or deficiencies, which diminishes the probative value of the petitioner’s statement and the affidavits submitted on his behalf.

The AAO has reviewed the psychosocial report from [REDACTED] which is based on one interview with the petitioner on June 5, 2006. It is noted that [REDACTED] does not specify the length of his interview with the petitioner on June 5, 2006. As stated by the director, [REDACTED] evaluation does not establish that the petitioner was subjected to battery or extreme cruelty by his spouse during their marriage. As discussed above, [REDACTED] mentions information reported by the petitioner that conflicts with the evidence in the record, and which detracts from the probative value of his evaluation. In addition, some of the information reported by the petitioner is inconsistent with the petitioner’s initial testimony. For example, the petitioner states in his July 18, 2006 affidavit that C-S- was physically abusive “a few times,” which is inconsistent with the information reported to Dr.

█ that the petitioner “suffered terrible physical abuse throughout most of their relationship.” In addition, the petitioner states in his July 18, 2006 affidavit that he “did not approach the police because [he] wanted to maintain peace,” which is inconsistent with the information reported to █ that he did not contact the police “because he believed that doing so would either jeopardize his immigration status or cause him to be detained.” The record contains no explanation for these inconsistencies. In addition, on appeal, counsel asserts that the petitioner was told by C-S- that she was born in Cuba, which is “one example of his spouse’s lies and mistreatment.” The petitioner, however, indicated on the instant petition that C-S- was born in Argentina and is a “U.S. citizen born in the United States.” Thus, had the petitioner believed that C-S- was born in Cuba, he would not have indicated on the Form I-360 that she was born in Argentina or was a U.S. citizen by virtue of her birth in the United States. While █ concludes that the petitioner suffers from PTSD and depression, and states further that the petitioner “is fragile and overwhelmed with fear, anxiety, and shame,” he does not recommend any treatment for the petitioner.

While we do not question the expertise of █ the numerous inconsistencies between the information in his evaluation and the evidence in the record diminishes the value of his report.

Good Faith Entry into Marriage

In addition to the documentation listed above, the record contains photographs of the petitioner’s marriage ceremony and the couple posing together on one other occasion.

The AAO affirms the director’s determination that the petitioner did not establish that he entered into the marriage in good faith.

On appeal, counsel states, “The petitioner and his former U.S. citizen wife made every intention at the start of their marriage to live together and have a happy marriage.”

In his July 18, 2006 affidavit, the petitioner states, in part, that he met C-S- in April 2005, through a mutual friend, and that, while they dated, he and C-S- “got along and had a lot of fun together.” and that C-S-’s baby daughter grew close to him. The petitioner states that they were married six months later at the courthouse in a small ceremony attended by █ and a friend of C-S-.

In his July 18, 2006 and December 21, 2007 affidavits, █ states, in part, that: he remembers that C-S- was “extremely loving” to the petitioner during their courtship and helped him get over his depression from his divorce; they all used to go out often and C-S- “had become a part of [their] group of friends”; the petitioner and C-S- moved in together during their courtship at the “█ address”; they all used to go to the movies together; the petitioner and C-S- seemed like the perfect couple; he bought furniture for the petitioner and C-S-’s apartment before the wedding; C-S- was at the petitioner’s side “nursing him lovingly” while he recovered from surgery; and he was present at their wedding.

In his December 21, 2007 affidavit, [REDACTED] states, in part, that: while the petitioner and C-S- were dating, Mr. [REDACTED] went out with them every other weekend and they went to the movies, out to dinner, and to [REDACTED] in Miami Beach, where they spent hours “discussing movies, restaurants, who [they] liked and what [they] thought;” C-S- “through her loving and funny ways got [the petitioner] to try several new cuisines”; they all watched movies together at their [REDACTED] apartment; and he attended their wedding ceremony.

In his psychosocial report, [REDACTED] states the following information reported by the petitioner: that he met C-S- through mutual friends and liked her because of her kindness; that he and C-S- had many similar values, including their religious beliefs; that C-S- had escaped from Cuba; that he spoke to C-S- about continuing his education in the United States, traveling to different parts of the United States and the world, “especially [the petitioner’s] home in Venezuela.” [REDACTED] states. “[The petitioner] reports that before he relocated to the United States he had never left Venezuela and wished to discover different peoples and cultures outside of where he lived.”

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The petitioner’s July 2006 statement does not contain probative details of his and C-S-’s courtship, their shared experiences, or their reasons for marrying. While [REDACTED] evaluation contains the petitioner’s statements regarding his attraction to C-S-, it also does not provide the essential details to establish that the petitioner’s intent when marrying was to establish a life together with C-S-. The affidavits [REDACTED] and [REDACTED] also fail to contain evidence probative to the petitioner’s intent in entering into his marriage. The photographs confirm that the petitioner and C-S- were married and pictured together, but these documents alone do not establish the petitioner’s good-faith entry into the marriage. The additional deficiencies of the partial phone bill, bank statement, and check copy are discussed in detail above and need not be repeated in detail here. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

As discussed herein, the petitioner has not demonstrated that he resided with his wife, that his wife subjected him to battery or extreme cruelty during their marriage, and that he entered into their marriage in good faith. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

Beyond the director’s decision, the AAO finds that the petition is also not approvable because the record fails to establish that the petitioner has a qualifying relationship as the spouse, intended spouse, or former spouse of a U.S. citizen and is eligible for immediate relative classification based on a qualifying relationship with his spouse. In his April 16, 2010 NOIR, the director requested information regarding the petitioner’s current marital status, including a copy of the marriage termination document, if applicable. The petitioner, however, has not submitted the requested information. It is noted that information on the petition indicates that the petitioner is married. In his July 18, 2006 affidavit, however, the petitioner refers to C-S- as his “ex-wife.” On appeal, counsel also refers to C-S- as the petitioner’s “former U.S. citizen wife.” Thus, the petitioner’s marital status remains unclear. For this additional reason, the petition may not be approved.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.