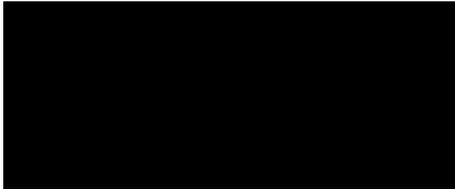


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B9

FILE:

Office: VERMONT SERVICE CENTER

Date: FEB 07 2011

IN RE:

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:

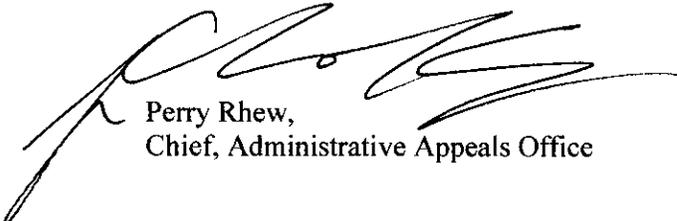


INSTRUCTIONS:

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 service center director denied the immigrant visa petition and 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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that he and his wife shared a joint residence; (2) that his wife subjected him to battery or extreme cruelty during their marriage; and (3) that he married his wife in good faith. On appeal, counsel submits a memorandum of law and copies of previously-submitted documents.

*Applicable Law*

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, the following:

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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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.

#### *Pertinent Facts and Procedural History*

The petitioner, a citizen of Pakistan, married [REDACTED] a citizen of the United States, on January 1, 2002. He filed the instant Form I-360 on August 11, 2008. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, filed timely responses. After considering the evidence of record, including the petitioner's responses to the director's requests for additional evidence, the director denied the petition on February 23, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

#### *Joint Residence*

The first issue before the AAO on appeal is whether the petitioner shared a joint residence with [REDACTED]. On the Form I-360, the petitioner stated that he and [REDACTED] lived together from [REDACTED].

As evidence that he and [REDACTED] together, the petitioner submitted a letter from the management company that ran the complex at which he and [REDACTED] allegedly resided together. According to this May 21, 2004 letter, the petitioner submitted an application for [REDACTED] to be added to his lease on

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

January 17, 2002. However, the management company was unable to add her name to the lease “due to credit issues.”

In his December 21, 2009 self-affidavit, the petitioner stated that because of their financial situation, he and [REDACTED] lived with his brother and sister-in-law. In his undated statement, the petitioner’s brother stated that he allowed [REDACTED] and the petitioner to live in his home with his family. On appeal, counsel reiterates the petitioner’s assertion that he and [REDACTED] lived with the petitioner’s brother and sister-in-law because they could not afford their own apartment, despite the fact that his brother was openly opposed to the marriage. Although the petitioner submits a letter from a bank stating that he and his wife resided at the same address, the letter and corresponding account statement are dated after the petitioner stated they ceased living together.

When considered in the aggregate, the relevant testimonial and documentary evidence fails to demonstrate that the petitioner resided with [REDACTED]. While we acknowledge the claim that the petitioner and [REDACTED] resided with the petitioner’s brother, the petitioner’s vague testimony regarding the alleged joint residence fails to support his claim, as he provides no probative information. For example, he does not describe their home, their home furnishings, their jointly-owned belongings, their neighborhood, or their shared, residential routines in any meaningful way. Nor does the petitioner’s brother provide this information. The letters from the bank and the property management company also fail to establish that the petitioner and [REDACTED] lived together.

The evidence of record fails to demonstrate that the petitioner resided with [REDACTED] as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

The second issue before the AAO on appeal is whether the petitioner has established that [REDACTED] subjected him to battery or extreme cruelty during their marriage.

In his December 21, 2009 self-affidavit, the petitioner stated that [REDACTED] became aggressive shortly after they began living together. According to the petitioner, [REDACTED] spoke harshly; ordered him around; directed him to do chores; demanded he come straight home from work; cursed at him; ridiculed his ethnic heritage; scratched his compact discs; cut up a special tie of his; tried to control him; forbade him from watching television, listening to music, or swimming; restricted his ability to speak with family and friends on the telephone; did not pass telephone messages to him; called his place of employment; threatened his immigration status; did not help with household expenses; and had an extramarital affair that resulted in a pregnancy.

In his undated letter, the petitioner’s brother, with whom the couple lived, stated that he began noticing that the petitioner was no longer open and became agitated over minor things. He also stated that [REDACTED] made unspecified physical threats against the petitioner and his family after they separated. In his December 17, 2007 letter, [REDACTED] stated that over time [REDACTED] became “abusive, indifferent, and distant.” In his December 19, 2007 letter, [REDACTED] that

he became aware of the petitioner's marital problems when his behavior at work began to change: according to [REDACTED] the petitioner became much quieter, frequently looked tired, stopped going to lunch with other staff members, was short-tempered, had difficulty concentrating, and seemed panicked. [REDACTED] also stated that the petitioner told him that [REDACTED] was pregnant by another man.

The petitioner also submitted documentation regarding several visits to his medical services provider. In his September 6, 2002 report, [REDACTED] stated that the petitioner appeared anxious. In his November 7, 2002 report, [REDACTED] stated that the petitioner was anxious and depressed, and that his wife had a baby with another man and was living with her boyfriend. In his December 10, 2002 report, [REDACTED] stated that the petitioner's depression and anxiety seemed to have improved, and recommended professional counseling. In her December 11, 2002 report, [REDACTED] stated that the petitioner was being treated for anxiety and depression "precipitated by marital conflicts," that there was "no history of abusive behavior in relationship," and that his wife had a child by another man. In his March 6, 2003 report, [REDACTED] stated again that the petitioner's depression and anxiety had improved, and he reported continued improvement in his April 29 and July 6, 2004 reports. In his September 28, 2004 report, [REDACTED] that the petitioner had lost his job, and that he was suffering from anxiety and depression.

The relevant testimonial and documentary evidence fails to support the petitioner's claim that [REDACTED] subjected him to battery or extreme cruelty during their marriage. First, the petitioner does not allege, and the record does not establish, that he was subjected to battery perpetrated by [REDACTED]

Nor does the record demonstrate that [REDACTED] behavior constituted extreme cruelty. As noted by the director, [REDACTED] specifically stated that "[t]here is no history of abusive behavior in relationship." This is inconsistent with the petitioner's testimony, and it diminishes the probative value of his testimony regarding the alleged abuse. On appeal, counsel contends that the director misread [REDACTED] statement, and argues that "she meant there was no physical abuse." However, that is not what [REDACTED] said, and we are not persuaded by counsel's argument. Moreover, this is not the only inconsistency in the petitioner's testimony with regard to the alleged abuse. In his September 19, 2002 submitted to the legacy Immigration and Naturalization Service (INS) in support of his permanent residency petition, the petitioner requested that the INS reschedule an interview scheduled for September 26, 2002 because [REDACTED] was pregnant with "our first newborn" and that she was "due at any time." In addition to being untrue, the letter contains no indication of any abuse. As the petitioner later admitted, at the time he wrote this letter he was aware that he was not the father of the baby, who had already been born. The petitioner's testimony is also inconsistent with that of his brother, who claimed that [REDACTED] made unspecified physical threats against the petitioner and his family after their separation. The petitioner, however, made no such claim. These inconsistencies further diminish the probative value of his testimony regarding the abuse to which he was allegedly subjected.

Counsel states on appeal that psychological abuse may be considered an act of violence. We agree. However, we do not agree that the petitioner was subjected to psychological abuse. Although the

behavior of [REDACTED] as described by the petitioner may have been unkind and inconsiderate, the petitioner has failed to establish that her actions were comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Nor has the petitioner established that [REDACTED] behavior was accompanied by other coercive actions or that her behavior was aimed at insuring dominance or control over him. 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)).

Finally, counsel states on appeal that in the petitioner’s culture, women do not talk back to their husbands, belittle them, and embarrass them in front of their families. While that may be true, the petitioner in this case has failed to establish that the behavior of [REDACTED] constituted battery or extreme cruelty. The petitioner has failed to establish that T-J- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Faith Entry into Marriage*

The third issue before the AAO on appeal is whether the petitioner has established that he married [REDACTED] in good faith. In his December 21, 2009 self-affidavit, the petitioner stated that he met T-J- at a bus station in May 2000. He stated that they began talking about her family, and exchanged telephone numbers. According to the petitioner, he fell in love with [REDACTED] because she seemed very family-oriented. Although his family did not approve of his interest in [REDACTED] because she was not a Muslim, he stated that he was certain they would eventually accept her.

As further evidence that he married [REDACTED] in good faith, the petitioner submitted testimonial evidence from friends and family members; the previously-discussed letter from the property management company that managed his apartment complex; evidence of a joint checking account; insurance documents; and photocopies of photographs of what appear to be the couple’s wedding ceremony.

When considered in the aggregate, the relevant evidence fails to establish that the petitioner married [REDACTED] in good faith. The statements submitted by the petitioner and his affiants lack probative detail providing insight into the petitioner’s intentions upon entering into the marriage: they provide no information regarding shared experiences apart from the alleged abuse. For example, the petitioner provides no information regarding the couple’s courtship or wedding ceremony, or any other meaningful information regarding their relationship which would allow the AAO to make a determination on his intentions upon entering into the marriage. Nor do his friends and family members provide such information. Although the letter from the property management company explains why [REDACTED] name is not on the lease, it does not establish that the petitioner married her in good faith. Nor does the evidence of a joint checking account establish that the petitioner married [REDACTED] in good faith or that they had any shared financial obligations: the statement submitted by the petitioner covers the period from July 31 through August 14, 2002, which occurred after the couple had ceased living together in May 2002. Moreover, the single transaction documented by this

statement – a deposit of \$95 followed by a withdrawal of \$95 five days later – does not indicate that this account was drawn upon frequently and was a source of shared financial assets or obligations.

Although counsel submits an explanation on appeal as to why the account was rarely drawn upon, this statement is nonetheless not evidence of the petitioner's good faith in entering the marriage. The insurance document completed by the petitioner when he commenced employment at PNC indicates that the petitioner elected personal accident coverage for [REDACTED] and designated her as the beneficiary of his life insurance policy. However, the same document shows that the petitioner specifically declined medical and dental coverage for [REDACTED], and that he also declined to contribute toward a dependent care account. Although the pictures of the couple's wedding day document the event, they alone do not establish the petitioner's good-faith entry into the marriage.

Counsel states on appeal that there is evidence in the record that the petitioner once threatened to convert to Christianity during an argument with his brother over [REDACTED] and therefore risked being shunned by his entire family, and argues that this is evidence of his good faith entry into the marriage. However, the record lacks detailed, probative evidence of this alleged incident.

Counsel also states on appeal that the fact that the couple's marriage was imperfect should not be held against the petitioner when attempting to establish his good faith entry into it; that many marriages involve financial difficulties such as a poor credit history; that many couples have joint banking accounts that are rarely used due to financial mistrust; that immigrants should not be required to have more conventional or successful marriages than citizens of the United States; and that USCIS must review all evidence submitted by the petitioner. We do not dispute any of these statements. Rather, as set forth above, the evidence submitted by the petitioner in this particular case does not meet his burden of proof.

The petitioner has failed to establish that he entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Conclusion*

On appeal, the petitioner has failed to overcome the director's grounds for denial and has not established that he jointly resided with [REDACTED] that she subjected him to battery or extreme cruelty; or that he married her in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and his petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.