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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

[redacted]

B9

DATE: JUL 14 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Self-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:

SELF-REPRESENTED

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 United States citizen.

The director determined that the petitioner had failed to establish his good moral character and denied the petition accordingly.[1] On appeal, the petitioner submits a statement and a copy of a state court judgment modifying a civil protection order.

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:

> (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-

[1] The ground for the director's denial is clearly stated on pages one, two and three of his decision despite the typographical error in paragraph six of page 3.

petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

(vii) *Good moral character*. A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, that:

For the purposes of this Act – No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

* * *

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. . . .

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:

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *Abuse*. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy,

social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

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

Pertinent Facts and Procedural History

The petitioner, a citizen of Pakistan, was paroled into the United States in 1993. On June 3, 2000, he married a citizen of the United States.[2] The former couple was divorced on July 29, 2010.[3] The petitioner filed the instant Form I-360 on May 29, 2009. The director subsequently issued a request for additional evidence (RFE) of, among other things, the requisite battery or extreme cruelty of the petitioner's former wife and his good moral character. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on May 4, 2011 and the petitioner timely appealed.

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[2] The petitioner has been married three times. The instant petition is based on his relationship with his third wife. At the time this petition was filed, their divorce proceedings were pending. The petitioner's third wife previously filed an alien relative petition (Form I-130) on the petitioner's behalf, which she withdrew on September 4, 2008. The petitioner was subsequently placed in removal proceedings and became subject to a final removal order on June 29, 2010.

[3] Medina County Ohio, Court of Common Pleas, Case Number [redacted] (Entry of Divorce on July 29, 2010).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner has failed to overcome the ground for denial and an additional ground of ineligibility exists. The appeal will be dismissed for the following reasons.

Good Moral Character

The director denied the petition because the record demonstrated that the petitioner lacked good moral character, a finding that the petitioner has failed to overcome on appeal. The record shows that in 1994, the petitioner entered the apartment of his former girlfriend, damaged several of her belongings, some of which were burned and caused a fire when he placed them in the oven. Based on this incident, the petitioner was charged, pled no contest to, and was convicted of arson and burglary, felony offenses in violation of sections 943.03 and 943.10 of the Wisconsin Statutes.[4] The petitioner was sentenced to one year of imprisonment and five years of probation.[5] In 1995, while imprisoned, the petitioner was convicted of misdemeanor battery in violation of section 940.19(1) of the Wisconsin Statutes and the petitioner was sentenced to 30 days imprisonment.[6]

On May 26, 2009, three days before this petition was filed, the petitioner's convictions for arson and burglary were vacated due to an underlying defect in the criminal court proceedings.[7] However, on January 25, 2010, amended criminal charges were filed against the petitioner, he pled no contest to, and was convicted of negligent handling of burning material and criminal trespass of a dwelling in violation of sections 941.10(1) and 943.14 of the Wisconsin Statutes.[8] The court sentenced the petitioner to nine months of imprisonment for the negligent handling offense and two months of imprisonment for the criminal trespass, both of which the court deemed served.[9]

The director determined that although none of the petitioner's convictions placed him within any of the enumerated bars to finding good moral character within section 101(f) of the Act, the record still demonstrated that he was not a person of good moral character pursuant to the first sentence of the last paragraph of section 101(f) of the Act, which prescribes that such a circumstance "shall not preclude a finding that for other reasons such person is or was not of good moral character." The director noted that the petitioner was convicted of "Battery By Prisoners" and that his former wife was granted an order of protection against him in 2008, which was valid for five years.

On appeal, the petitioner asserts that he was never convicted of "Battery by Prisoner." Although the petitioner was initially indicted with that felony offense, the charge was amended to misdemeanor

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[4] *Judgment of Conviction and Sentencing*, Dane County Wisconsin Circuit Court, Case Number (Oct. 25, 1994).

[5] *Id.*

[6] Dane County Wisconsin Circuit Court, Case Number (Nov. 2, 1995).

[7] *Decision and Order*, Dane County Wisconsin Circuit Court, Case Number (May 26, 2009).

[8] *Amended Information*, Dane County Wisconsin Circuit Court, Case Number District Attorney Case Number (Jan. 25, 2010); *Amended Judgment of Conviction*, Dane County Wisconsin Circuit Court, Case Number (Jan. 26, 2010).

[9] *Amended Judgment of Conviction, supra* n. 8.

battery in violation of section 940.19(1) of the Wisconsin Statutes and the petitioner was convicted of this lesser offense.[10] Nonetheless, the petitioner's battery conviction is relevant to an assessment of the petitioner's moral character. Accordingly, the director's erroneous appellation of the offense did not prejudice the petitioner in these proceedings.

In his March 20, 2006 affidavit that he initially submitted in connection with his cancellation of removal application before the Immigration Judge, the petitioner recounted that in 1994 he became romantically involved with another student, but was upset when she began deceiving him about their relationship. The petitioner stated that he went to his former girlfriend's apartment after not seeing her for a few days and, when he entered the apartment, she was not there, but he saw signs that she had been intimate with another man. The petitioner explained that he became "defeated and enraged" by her betrayal, tore up reminders of their relationship in the apartment, cut up some of her clothing and stuffed animals, threw the objects in the oven, turned it on and left. The petitioner admits that he pled no contest to the charges of arson and burglary and was later convicted of those offenses. The petitioner expressed regret and remorse for his mistake and noted that he was struggling with depression at the time and was still mourning his father who had passed away a year earlier. While in jail, the petitioner explained that he stopped taking his anti-depressant medication, feared for his safety and got into a fight when another inmate approached him aggressively one day. The petitioner expressed regret and apologized for his offense.

In his April 8, 2010 affidavit submitted in response to the director's RFE, the petitioner stated, "I believe I am a person of good moral character" and listed volunteer activities he engaged in before he was detained by U.S. Immigration and Customs Enforcement (USICE). The petitioner did not further discuss the events in 1994 leading to his convictions for arson and burglary, the defect in the proceedings leading him to seek a vacation of those convictions, or his battery offense. Although the petitioner's offenses predate the filing of this petition by several years, the record shows that the events in 1994 were serious enough to lead the prosecutor to amend the indictment and reopen the criminal proceedings against the petitioner in 2010. The record shows that the petitioner pled no contest to the amended charges and was convicted of criminal trespass and negligent handling of burning material.

While the petitioner expresses remorse for his actions, his account of the 1994 incident is inconsistent with the statements he made to the police at the time of his arrest. The petitioner stated in his 2006 affidavit that he left his former girlfriend's apartment after seeing that she had been intimate with another man. The petitioner recounted that he called his therapist and spoke to him for a few hours, but then returned to his former girlfriend's apartment, damaged her belongings and placed them in the oven. When interviewed by the police, however, the petitioner did not mention that he had spoken to his therapist before causing the damage to his former girlfriend's apartment and did not indicate that he was already depressed due to his father's passing.[11] In his 2006

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[10] Case Number [redacted], *supra* n. 6.

[11] The record contains a Madison, Wisconsin Police Department report and an accompanying Fire Investigation Unit report, both dated March 17, 1994. These documents were submitted into the record

affidavit, the petitioner indicated that his anger stemmed from his former girlfriend's abandonment and betrayal, but did not discuss any other reasons for his actions. When interviewed by the police, however, the petitioner stated that he was upset that his former girlfriend had become more Westernized, that he "hated her appearance" and did not like her clothes and make up that made her look like a "call girl." The police report and amended indictment both state that the oven contained burned combustibles including a tray of cosmetics. The fire investigator concluded that the fire resulting from the petitioner's actions placed the seven individuals staying in the apartment building in "serious danger of death or injury due to fire and smoke."

The petitioner's former girlfriend, when interviewed by the police, stated that she attempted to terminate the relationship after the petitioner became possessive and demanding and that he became enraged when she confronted him about missing belongings in her apartment. Contrary to the petitioner's assertion in his 2006 affidavit that his former girlfriend had given him a key to her apartment as a sign of their commitment, his former girlfriend told the police that the petitioner had helped her move and had given her a key which she thought was the only key to the apartment. She also recounted that shortly before the incident leading to the petitioner's convictions, he threatened to kill himself if she left him, forced open her door breaking the chain lock, cancelled her telephone service and called her parents in Japan to tell them she was promiscuous and in danger of being expelled from school. The discrepancies between the petitioner's contemporaneous statements to the police and his testimony in these proceedings, as well as the report of his former girlfriend's account of his actions preceding the fire all detract from the credibility of his explanation of his actions.

On appeal, the petitioner also asserts that the director erroneously relied on the order of protection issued against him for the protection of his former wife. The petitioner claims that the order was dismissed and does not indicate that he lacks good moral character. However, the "Entry Modifying Civil Protection Order" submitted by the petitioner on appeal did not dismiss the protection order, but merely modified the order to allow the petitioner supervised visitation with his daughters.[12] The modification noted that the petitioner and his former wife had come to an agreement regarding "exclusive use of the parties' residence, temporary restraining orders, appointment of a Guardian ad Litem and supervised visitation with the children." The judge noted that dismissal of the protection order would not occur until the petitioner's former wife's attorney had submitted the complaint, agreed judgment entry and notice of dismissal. The petitioner did not submit any of those documents or other evidence that the order of protection against him was eventually dismissed.

Finally, the petitioner cites on appeal his "record of extensive exemplary community service." The record contains copies of letters dated between 2001 and 2002, which were originally submitted with the petitioner's application for cancellation of removal before the immigration court. Pastor

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during the petitioner's removal proceedings and the Ohio Immigration Court sent copies of the documents to the petitioner's former attorney on November 13, 2008.

[12] *Entry Modifying Civil Protection Order*, Medina County Ohio Court of Common Pleas, Domestic Relations Division, Case Number [redacted] (Sept. 3, 2008).

and both praised the petitioner for sharing his faith and helping to build understanding between Christians and Muslims. However, both and stated that they had not known the petitioner for a long time and both did not indicate that they had any knowledge of his criminal record. then a candidate for governor of Ohio, praised the petitioner's work on his campaign and the petitioner's character in general, but did not indicate that he knew the petitioner for any significant length of time or was aware of his past offenses. praised the petitioner's volunteer work at El Bario, a social services agency, by helping their clients develop computer skills. In an undated letter, stated that the petitioner was one of his oldest and closest friends who worked hard and was always willing to help him during difficult times. also stated that during a visit to the petitioner's family, he observed how much the petitioner loved his daughters. Five other letters thank the petitioner and his former wife for their charitable contributions to organizations such as the Salvation Army. Finally, the record contains an undated copy of an article from what appears to be a local newspaper which lists the petitioner as one of several speakers at a "patriotic concert."

These letters attest to the petitioner's volunteer work, efforts to bridge understanding between different faiths, and to his and his former wife's charitable contributions. However, all of the letters are dated between seven and eight years before this petition was filed. Although the petitioner states on appeal that he is a 2004 graduate of "Leadership Medina County," he submits no evidence of his participation in that program and does not discuss his moral character during the ensuing four years before this petition was filed. In addition to their age and limited temporal scope, the 2001-2002 recommendation letters do not indicate that the authors (apart from knew the petitioner for a significant period of time, had ongoing interactions with him or were otherwise able to knowledgably attest to the petitioner's good moral character outside of their limited contact with him.

In sum, the record shows that in 1994, the petitioner entered the apartment of his former girlfriend without her knowledge or consent, damaged her belongings and started a fire, which endangered the lives of the other residents within the apartment building. Although this incident occurred many years ago, the petitioner's convictions for arson and burglary were vacated just three days before this petition was filed. During the pendency of these proceedings, the petitioner was charged with an amended indictment; and he pled no contest to, and was convicted of criminal trespass and negligent handling of burning material on January 26, 2010. While the record contains favorable letters regarding the petitioner's moral character in 2001 and 2002, those letters do not outweigh the petitioner's criminal conviction for battery in 1994 and his aforementioned 2010 convictions. The discrepancies between the petitioner's account of his actions in these proceedings and his and his former girlfriend's contemporaneous statements to the police in 1994 further detract from his claim of good moral character. On appeal, the petitioner asserts that his 2010 convictions were connected to his former wife's extreme cruelty, but as will be discussed below, the petitioner has not established that his former wife subjected him to extreme cruelty or that his offenses were committed under other extenuating circumstances. Although the petitioner's convictions do not place him within any of the enumerated bars to good moral character at section 101(f) of the Act, those offenses combined with other pertinent evidence of record indicate a lack of good moral

character for other reasons. *See* section 101(f) of the Act, 8 U.S.C. § 1101(f) (first sentence of the last paragraph). When viewed in the aggregate, the relevant evidence shows that the petitioner was convicted of unlawful acts that adversely reflect upon his moral character and that his behavior fell below the standards of the average citizen. *See* 8 C.F.R. § 204.2(c)(1)(vii) (prescribing these standards). Accordingly, the petitioner has not demonstrated his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Battery or Extreme Cruelty

Beyond the decision of the director, the record also fails to demonstrate that the petitioner's former wife subjected him or either of his children to battery or extreme cruelty during their marriage. The petitioner discussed his former wife's alleged abuse in his undated affidavit, his May 18, 2009 handwritten letter and his April 18, 2010 affidavit. The petitioner stated that he did not tell his former wife about his past arrests and convictions until they were preparing to file his immigrant petition and adjustment application and that she was very mad and threatened to divorce him, but later calmed down and decided to contact an immigration attorney for assistance. Shortly after their marriage, the petitioner recalled that his former wife would get upset when his prayer schedule prevented him from attending events with her and that she threatened him when he objected to his father-in-law's negative comments about Islam and Pakistan after September 11, 2001.

The petitioner also described his disagreement with his former wife regarding their childcare. The petitioner stated that his former wife's income was much higher than his own and after their first daughter was born, she asked him to care for the baby when she returned to work. The petitioner recounted that he was unable to maintain his employment and pursue his career because he had to care for their children. The petitioner and his former wife later bought a gas station, but the petitioner claimed his former wife blamed him when the business failed.

The petitioner also stated that his former wife had periodic outbreaks of Herpes symptoms and insulted him when he rejected her sexual advances during those times. The petitioner indicated that when they argued about his lack of interest in physical intimacy, his former wife made him sleep in their basement on a dirty bed. In August 2005, the petitioner recounted that after one argument, his former wife became angry and kicked a hole in the wall. The petitioner also stated that his former wife struck him between five to ten times when she was angry as a way to stop their arguments. On other unspecified occasions, the petitioner stated that his former wife grabbed his shirt collar and threatened to have him deported. The petitioner also noted that his former wife kept a pistol given to her by her uncle before their marriage, which she insisted on keeping in a closet instead of a locked gun cabinet, although the petitioner eventually obtained a trigger lock for the gun.

In his January 3, 2009 letter, a licensed social worker and therapist, stated that he had seen the petitioner intermittently since August 2003. reported that the petitioner suffered from mild depression, anxiety and panic disorders caused by "a myriad of issues including his immigration status, frequent episodes of employment/unemployment" and the prejudice of his in-laws and his former wife's failure to support him when his in-laws made disparaging remarks. noted other "marital issues" including the contention over his former wife being

continuously employed and highly compensated while the petitioner was the primary child care provider; and the petitioner's dependence on his former wife to resolve his immigration status. observed that the petitioner's marriage had "periods of strife followed by times where the couple entertained, traveled on vacation, and enjoyed one another greatly." In his testimony before the Immigration Judge during the petitioner's removal proceedings, opined that the petitioner's wife had a controlling and manipulative personality and that her actions constituted extreme cruelty, but he stated that he met the petitioner's former wife on only one occasion for approximately ten minutes. In his 2009 letter, did not indicate that any of the petitioner's mental health conditions were caused by his former wife's battery or extreme cruelty.

In their 2009 letters, the petitioner's brother and friend, both attested to having personal knowledge of emotional abuse, psychological harm and extreme cruelty that the petitioner's former wife inflicted upon him, but neither the petitioner's brother nor discuss their observations of any particular incident of abuse in detail or otherwise explain the basis for their knowledge of the claimed abuse. stated that he had observed the petitioner's father-in-law ridicule the petitioner's social, religious and cultural beliefs, but he does not indicate that the petitioner's former wife participated in, facilitated or otherwise was complicit in her father's actions. The petitioner's brother also noted that the petitioner's former wife cut off his access to his daughters after she filed for divorce. However, as previously mentioned, although the petitioner's former wife was initially granted a civil order of protection, the order was modified on September 3, 2008 to remove the restriction suspending the petitioner's visitation with their children.

In sum, the relevant evidence fails to demonstrate that the petitioner's former wife subjected him or either of his children to battery or extreme cruelty during their marriage. Although the petitioner briefly asserted that his former wife struck and grabbed him several times, he did not describe any particular incident of physical violence in probative detail and none of the other, relevant evidence indicates that the petitioner's former wife battered him. The record also does not establish that the other actions of the petitioner's former wife constitute extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner asserts that his former wife economically abused him, but he does not discuss any specific action other than that his former wife asked him to care for their children to the detriment of his career because her income was much higher than his and because their younger daughter's skull was fractured while she was in the care of a babysitter. In addition, the petitioner submitted copies of electronic mail correspondence in which he admitted withdrawing money from their joint bank account and leaving his former wife only $400, obtaining a cash advance from the former couple's credit card for several thousand dollars, depositing the money in his own individual account and then cancelling the credit card while his former wife was in another state on vacation with their children. The electronic mail correspondence and the transcript of the hearing before the Immigration Judge also indicate that before the petitioner's former wife and their children returned to their marital home, the petitioner dismantled the alarm system and disabled the locks with super glue.

The petitioner further claimed in his undated affidavit, that his former wife obtained an order of protection against him by withholding facts regarding her own abuse. However, in his May 18, 2009 letter, the petitioner admitted that prior to their separation, he was dating other women online,

and "did some stupid things" out of anger and frustration shortly before he was served with his former wife's order of protection. As previously discussed, the record indicates that the order of protection against the petitioner remains in effect until August 11, 2013. The record further shows that during the former couple's divorce proceedings, the judge issued a mutual restraining order and denied the petitioner's motion for an order of protection against his former wife. The petitioner's appeal of that denial was also dismissed.[13] The relevant evidence indicates that the petitioner and his former wife were involved in a lengthy, contested divorce. The record does not, however, establish that the petitioner's former wife subjected him or either of their children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has failed to overcome the director's ground for denial and establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. Beyond the director's decision, the petitioner has also failed to demonstrate that his former wife subjected him or either of their children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.[14]

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not sustained that burden and he is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on the two aforementioned grounds, with each considered an independent and alternative basis for denial. Consequently, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.

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[13] *Magistrate's Order Dismissing Appeal,* Medina County Ohio, Court of Appeals, Ninth District, Case Number 09CA0083-M (Feb. 2, 2010), available at http://www.co.medina.oh.us/medct_epublicnodr/ (last accessed July 12, 2011).

[14] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).